TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 325.

ROBERT T. MEYER, PLAINTIFF IN ERROR,

vs.

THE STATE OF NEBRASKA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

FILED APRIL 11, 1921.

(24,032)

(28,823)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 5, 1922.

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1 No. 21924.

MEYER

v.

STATE.

Pleas Before the Supreme Court of the State of Nebraska at a Term Thereof Begun and Holden at the Capitol, in the City of Lincoln, in said State, on the 2d day of January, 1922.

Present:

Hon. Andrew M. Morrissey, Chief Justice.
Hon. Charles B. Letton, Judge.
Hon. William B. Rose, Judge.
Hon. James R. Dean, Judge.
Hon. Chester H. Aldrich, Judge.
Hon. George A. Day, Judge.
Hon. Leonard A. Flansburg, Judge.

Attest:
H. C. LINDSAY,
Clerk.

Be it remembered, That on the 8th day of February, 1921, there was filed in the office of the Clerk of said Supreme Court a certain Petition in Error, in the words and figures following, to wit:

2 In the Supreme Court of the State of Nebraska.

ROBERT T. MEYER, Plaintiff in Error,

vs.

THE STATE OF NEBRASKA, Defendant in Error.

Petition in Error.

The plaintiff complains of the defendant for that on the 14th day of December, 1920, the defendant herein recovered a judgment against the plaintiff herein in the District Court of Hamilton County, Nebraska, whereby the plaintiff was adjudged and sentenced to pay a fine of $25.00 and $— costs, in an action pending in said court, wherein the defendant herein was plaintiff and the plaintiff herein was defendant. A transcript of the proceedings containing said judgment is filed herewith.

The plaintiff alleges that there is error in said proceedings and judgment in this:

1. The verdict is not sustained by sufficient evidence.

2. The verdict is contrary to law.

3. The court erred in overruling the objection of the defendant therein to the introduction of any testimony in support of the charges set forth in the information.

4. The court erred in overruling the motion of the defendant therein made at the close of the introduction of testimony on the part of the State for a directed verdict.

5. The court erred in overruling the motion of the defendant therein made at the close of the testimony in said cause for a directed verdict.

6. The court erred in deciding and holding that the evidence adduced in said cause was sufficient to sustain a verdict of guilty.

7. The court erred in giving Instruction No. 1.

8. The court erred in giving Instruction No. 2.

9. The court erred in giving Instruction No. 3.

10. The court erred in giving Instruction No. 4.

3 11. The court erred in giving Instruction No. 5.

12. The court erred in giving Instruction No. 6.

13. The court erred in giving Instruction No. 7.

14. The court erred in giving Instruction No. 8.

15. The court erred in giving Instruction No. 9.

16. The court erred in giving Instruction No. 10.

17. The court erred in giving Instruction No. 11.

19. The court erred in overruling the defendant's motion for a new trial.

The plaintiff, therefore, prays that said judgment may be reversed and for such other and further relief as justice may require.

ALBERT & WAGNER,
SANDALL & WRAY,
Attorneys for Plaintiff in Error.

Endorsed: 21924. Meyer v. State. Petition in Error. Supreme Court of Nebraska. Filed Feb. 8, 1921. H. C. Lindsay, Clerk.

4 And on the same day there was filed in the office of the Clerk of said Supreme Court, a certain Transcript of the proceedings had in said case in the district court of Hamilton county, Nebraska, and the following is a true copy of the said transcript so

filed, except pages 1 to 6 thereof, which pages are a transcript of the proceedings had in such case in the county court of said county:

5&6 *Transcript.*

District Court, Hamilton County, Nebraska.

Pleas in the District Court of the Fifth Judicial District *District* in and for Hamilton County, Nebraska, at a term thereof begun and holden in the city of Aurora on the 20th day of September, A. D. 1920, in a certain case therein pending wherein The State of Nebraska was plaintiff and Robert T. Meyer, was defendant.

Presiding, Honorable Edward E. Good, Judge.

J. W. WEEDIN,
Clerk.

7 Afterwards on this 3rd day of September, 1920, there was filed in this an Information, which follows:—

THE STATE OF NEBRASKA,
Hamilton County, ss:

In the District Court of Hamilton County, Nebraska.

THE STATE OF NEBRASKA, Plaintiff,

vs.

ROBERT T. MEYER, Defendant.

Information for Teaching Foreign Language in Parochial School.

The complaint and information of Frank E. Edgerton, County Attorney and prosecuting attorney of the county aforesaid, made in the name of the State of Nebraska before me, J. W. Weedin, Clerk of the District Court within and for said County this 3rd day of September, 1920. who being duly sworn, on oath doth depose and say that Robert T. Meyer late of said county, on or about the 25th day of May, A. D. 1920 in the County aforesaid, then and there being, and then and there being a teacher in Zion's Parochial School, a parochial school located and conducted in said County, did then and there unlawfully teach to Raymond Parpart, the subject of reading in a language other then the English language, to-wit, the German language, the said Raymond Parpart being then and there a child of the age of ten years, who had not at said time attained and successfully passed the eighth (8th) grade as evidenced by certificate of graduation issued by the County Superintendent of Hamilton County, Nebraska, the County in which the said Raymond Parpart then and there resided, contrary to the form of the Statutes in such case made and provided and against the peace and dignity of the State of Nebraska.

8 FRANK E. EDGERTON.

Subscribed in my presence and sworn to before me this 3rd day of September, A. D. 1920.

[SEAL.]

J. W. WEEDIN,
Clerk of the District Court,
Hamilton County, Nebraska.

Filed Sept. 3rd., 1920.
J. W. WEEDIN,
Clerk of Dist. Court.

STATE OF NEBRASKA,
County of Hamilton, ss:

F. E. Edgerton, Prosecuting attorney of Hamilton County, states that the following named witnesses are all the witnesses for the State of Nebraska, plaintiff, in connection with the within information against Robert T. Meyer for teaching foreign language in parochial school which are known to him at the date of filing the within information.

Raymond Parpart, Hampton, Nebraska.
—— Parpart, father of said Raymond Parpart, Hampton, Nebraska.
Arthur S. Nelson, Aurora, Nebraska.
F. E. Edgerton, Aurora, Nebraska.
Fred Jeffers, Aurora, Nebraska.

F. E. EDGERTON.

9 Afterwards on this 13th day of December, 1920, Proceedings were had in this cause which follows:

In the District Court of Hamilton County, Nebraska.

STATE OF NEBRASKA, Plaintiff,

vs.

ROBERT T. MEYER, Defendant.

Journal Entry.

Now on this 13th day of December, 1920, the same being one of the days of the regular September, A. D. 1920, term of this court this cause came on for hearing, upon the information filed herein and the evidence to be adduced, and now comes the defendant, Robert T. Meyer, and personally appears in open court, represented by his counsel C. F. Sandall, and Albert and Wagner his attorneys, and the County Attorney John J. Reinhardt and F. E. Edgerton, a Jury composed of the following named persons to-wit: Alvin Cunningham, Warren Jeffers, Elmer Garrett, F. C. Dick, Cl F. Lindgren, Wm. Lindahl, James Bird, C. A. Reyner, John F. Finegan, Gust F. Johnson, Henry Berggren, and John Bush, were duly empanneled and sworn to well and truly try, and a true deliverance make between the State of Nebraska, and the prisoner at the bar, Robert T. Meyer, to render a true verdict according to law, and the evidence.

Whereupon the opening statements were made by the counsel to the Jury, and the Jury being duly cautioned, the taking of evidence was thereupon begun and the same having all been adduced and concluded, Thereupon the arguments were made by counsel
10 to the Jury, and the same having been finished, and the Jury duly cautioned. Whereupon the court adjourned to meet Dec. 14, 1920, at 8:45 o'clock A. M.

—— ——, *Judge.*

11 Afterwards on this 14th day of December, 1920, Proceedings were had in this cause, which follows:

In the District Court of Hamilton County, Nebraska.

STATE OF NEBRASKA, Plaintiff,

vs.

ROBERT T. MEYER, Defendant.

Journal Entry.

Now on this 14th day of December, 1920 the same being one of the days of the regular September, A. D. 1920, term of this court this cause came on for further hearing, the arguments having heretofore been made by the counsel to the Jury; this cause was submitted to the Jury under the instructions of the court, and the Jury thereupon retired in charge of a sworn officer to deliberate upon their verdict.

This cause came on further to be heard, and now comes the Jury and return into court with their verdict, signed by their foreman, finding the Defendant guilty, in manner and form as charged in said information.

Verdict received in presence of Defendant, and ordered filed by said Clerk, and Jury discharged, which verdict is as follows, to-wit:

In the District Court of Hamilton County, Nebraska.

THE STATE OF NEBRASKA, Plaintiff,

and

ROBERT T. MEYER, Defendant.

Verdict of Jury.

STATE OF NEBRASKA,
County of Hamilton, ss:

We, the Jury duly impanelled and sworn in the above entitled cause, do find the defendant guilty in manner and form as
12 charged in the information.

Dated this 14th day of December, 1920.

HENRY BERGGREN,
Foreman.

Filed Dec. 14, 1920.
J. W. WEEDIN,
Clerk Dist. Court.

13 Afterwards on this 14th day of December 1920, there was filed in this cause, Instructions of the Court, which follows in words and figures, to-wit:

In the District Court of Hamilton County, Nebraska.

STATE OF NEBRASKA, Plaintiff,

vs.

ROBERT T. MEYER, Defendant.

Instructions of the Court.

Instruction No. 1.

Gentlemen of the jury: You are instructed that in this case the State of Nebraska prosecutes the defendant, Robert T. Meyer, upon an information filed by the County attorney of Hamilton County, Nebraska, in which it is charged that on the 25th day of May, A. D. 1920, in Hamilton County, Nebraska, the defendant, then and there being a teacher in Zion's parochial School, a parochial school located and conducted in said County, did then and there unlawfully teach to Raymond Parpart, the subject of reading in a language other than the English language, to-wit: The German language, the said Raymond Parpart, being then and there a child of the age of Ten years, and who had not at said — attained and successfully passed the eighth grade, as evidenced by a certificate of graduation issued by the County superintendent of Hamilton County, Nebraska, the County in which the said Raymond Parpart, then and there resided, contrary to the statute in such cases made and provided and against the peace and dignity of the State of Nebraska.

To this information the defendant has entered a plea of not guilty; the effect of this plea is to impose upon the State the burden of proving beyond a reasonable doubt such and every material allegation in the information.

Given.

14 Instruction No. 2.

You are instructed that the meterial allegations of the information are:

1. That in Hamilton County, Nebraska, and on the 25th day of May, 1921, the defendant was a teacher in Zion's Parochial School.

2. That on said date, in said school, he taught in a language other than the English language, to wit: The German language, the subject of reading to one Raymond Parpart.

3. That at said time the said Raymond Parpart, was a child who had not attained and successfully passed the eighth grade in school as evidenced by a certificate of graudation issued by the County Superintendent of Hamilton County, and that at said time said Raymond Parpart, was a resident of said Hamilton County.

4. That said Zion's Parochial School was a parochial school located and conducted in said Hamilton County, Nebraska, at the time of the offence charged, to-wit: May 25, 1920.

Unless you find from the evidence beyond a reasonable doubt that each of the material allegations of this information are true, then you should give the defendant the benefit of such doubt and acquit him. Upon the other hand, you are instructed that if you find each of these material allegations of the information to be true, beyond a reasonable doubt, as hereinafter defined, then it is your duty by your verdict to find the defendant guilty in manner and form as charged.

Given.

15 Instruction No. 3.

You are instructed that the statute of this State provides, among other things:

"No person, individually, or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other then the English language. Languages other than the English languages, may be taught as languages only after the pupil shall have attained and successfully passed the eighth grade, as evidenced by the certificate of graduation issued by the County Superintendent of the County of which the child resides.

Given.

16 Instruction No. 4.

The jury are instructed that a reasonable doubt is an actual, substantial doubt, arising from the evidence or want of evidence in the case. If, after a careful and impartial examination and consideration of all the evidence in the case, you can say that you feel an abiding conviction of the guilt of the defendant, and are fully satisfied to a moral certainty of the truth of the charge made against him, then you are satisfied beyond a reasonable doubt.

Given.

17 Instruction No. 5.

You are instructed that the governing board of a parochial school has power and authority to fix the hours during which such school shall be taught, and in this case if you find that the governing board did fix the hours for the teaching of school from 9, to 12, o'clock in the forenoon and from 1-30 to 4 o'clock in the afternoon, and that the interim between 12 o'clock noon and 1-30 in the afternoon was no part of the teaching hours of said parochial school, then the

defendant would not be guilty of any offence in teaching the subject of reading in the German language during such hours.

Given.

18 Instruction No. 6.

You are instructed that it is not a violation of law for a teacher to teach the subject of reading in the German language if such teaching is done out of teaching hours of such school.

Given.

19 Instruction No. 7.

You are instructed that the law raises no presumption against the defendant, on the contrary, the presumption of law is in favor of his innocence. This legal presumption of innocence is a matter of evidence, to the benefit of which the defendant is entitled. This presumption of innocence continues through the trial, until every material allegation in the information is established by the evidence to the exclusion of all reasonable doubt.

Given.

20 Instruction No. 8.

You are instructed that if you find from the evidence in this case beyond a reasonable doubt that the governing board of Zion's parochial school fixed the hours for teaching school from 9 o'clock in the Morning to 12 o'clock noon, and from 1-30, o'clock to 4 o'clock in the afternoon, for the teaching of subjects in the English language. But also by rule provided that the half-hour from 1 o'clock in the afternoon to 1-30, should be used for teaching any subject in the German language, and that this was a mere device or subterfuge to avoid the penalty of the law for teaching the German language, then and in such cases the whole time from 1 o'clock in the afternoon would within the contemplation of the law be a part of the school-teaching hours of said parochial school.

Given.

21 Instruction No. 9.

The jury are instructed that in determining any of the questions of fact presented in this case, the jury should be governed solely by the evidence introduced before them. The jury have no right to indulge in speculation, conjectures or interferences not supported by the evidence. Each juror may apply to the subject before him that general knowledge which any man may be presumed to have, yet if he be personally acquainted with any material or particular fact or facts not shown in the evidence, he is not permitted to mention the circumstances privately to his fellow-jurors, nor should you be governed by the statements of counsel not supported by the evidence.

Wherefore, if any juror knows of any particular fact or facts material to the issues of this case, not shown by the evidence, it is his duty while acting as a juror on the trial of this case to keep and remain silent in relation thereto.

Given.

22 Instruction No. 10.

The jury are instructed that the credibility of the witnesses is a question exclusively for the jury to determine. In determining the weight to be given to the testimony of the several witnesses, the jury should take into consideration their interest in the result of the suit, if any such is proved; their conduct and demeanor while testifying; their apparent fairness or bias; if any such appears; their opportunities for seeing or knowing the things about which they testify; the reasonableness or unreasonableness of the story told by them, and all the evidence and facts and circumstances proved, tending to corroborate or contradict such evidence, if any such appears.

Given.

23 Instruction No. 10.

The jury are instructed that the credibility of the witnesses is a question exclusively for the jury to determine. In determining the weight to be given to the testimony of the several witnesses, the jury should take into consideration their interest in the result of the suit, if any such is proved; their conduct and demeanor while testifying; their apparent fairness or bias; if any such appears; their opportunities for seeing or knowing the things about which they testify; the reasonableness or unreasonableness of the story told by them, and all the evidence and facts and circumstances proved, tending to corroborate or contradict such evidence, if any such appears.

Given.

24 Instruction No. 11.

When you retire to your juryroom, you should select one of your number as foreman. Two forms of verdict are submitted for your consideration—one finding the defendant guilty in manner and form as charged in the information; the other finding the defendant not guilty.

When you have agreed upon a verdict, you should select the form which is in accordance with your finding, have your foreman date and sign the same, and all return with it into court.

Given.

Filed Dec. 14, 1920.
J. W. WEEDIN,
Clerk of District Court.

25 Afterwards on this 14th day of December, 1920, there was filed in this cause a Verdict, which follows:

In the District Court of Hamilton County, Nebraska.

THE STATE OF NEBRASKA, Plaintiff,

vs.

ROBERT T. MEYER, Defendant.

Verdict of Jury.

STATE OF NEBRASKA,
County of Hamilton, ss:

We, the Jury duly impanelled and sworn in the above entitled cause, do find the defendant guilty in manner and form as charged in the information.

Dated this 14th day of December, 1920.

HENRY BERGGREN,
Foreman.

Filed Dec. 14, 1920.

J. W. WEEDIN,
Clerk Dist. Court.

26 Afterwards on this 14th day of December, 1920, there was filed in this cause a Notice of Appeal, which follows:

In the District Court of Hamilton County, Nebraska.

THE STATE OF NEBRASKA

vs.

ROBERT T. MEYER, Defendant.

Notice of Appeal.

The defendant in said cause hereby gives notice of appeal to the Supreme Court of Nebraska from the judgment rendered in said cause.

SANDALL & WRAY,
M. F. STANLEY, AND
ALBERT & WAGNER,
Attorneys for Defendant.

Filed Dec. 14, 1920.

J. W. WEEDIN,
Clerk of District Court.

27 Afterwards on this 14th day of December, 1920, there was filed in this cause a Motion, which follows:

In the District Court of Hamilton County, Nebraska.

THE STATE OF NEBRASKA

vs.

ROBERT T. MEYER, Defendant.

Motion for New Trial.

Comes now the defendant in the above entitled cause and moves the Court for a new trial thereof upon the following grounds:

1. That the verdict is not sustained by sufficient evidence.

2. That the verdice is contrary to law.

3. Errors of law occur-ing curing the trial, duly excepted to by the defendant.

4. The Court erred in overruling defendant's motion for a directed verdict at the close of the testimony for the State.

5. The Court erred in overruling defendant's motion for a directed verdict after both sides had rested.

6. The Court erred in giving Instruction No. 1, on the Court's own motion.

7. The Court erred in giving Instruction No. 2, on the Court's own motion.

8. The Court erred in giving Instruction No. 3, on the Court's own motion.

9. The Court erred in giving Instruction No. 4, on the Court's own motion.

10. The Court erred in giving Instruction No. 5, on the Court's own motion.

28 11. The Court erred in giving Instruction No. 6, on the Court's own motion.

12. The Court erred in giving Instruction No. 7, on the Court's own motion.

13. The Court erred in giving Instruction No. 8, on the Court's own motion.

14. The Court erred in giving Instruction No. 9, on the Court's own motion.

15. The Court erred in giving Instruction No. 10, on the Court's own motion.

16. The Court erred in giving Instruction No. 11, on the Court's own motion.

ROBERT T. MEYER,
Defendant,
By SANDALL & WRAY,
M. F. STANLEY, AND
ALBERT & WAGNER,
His Attorneys.

Filed Dec. 14, 1920.
J. W. WEEDIN,
Clerk Dist. Court.

29 Afterwards on this 14th day of December, 1920, proceedings were had in this cause which follows:

In the District Court of Hamilton County, Nebraska.

STATE OF NEBRASKA, Plaintiff,

vs.

ROBERT T. MEYER, Defendant.

Journal Entry.

And now on this 14th day of December, A. D. 1920, this cause came on for hearing upon the motion of the Defendant for a new trial filed herein.

On consideration whereof and the court having heard the arguments of counsel and being duly advised in the premises the court overrules said motion for a new trial to which ruling of the court defendant excepts.

The defendant being informed of the verdict and the penalty for the offense the said Robert T. Meyer, this day convicted of the crime of teaching the subject of reading in a language other then English, to-wit, the German language, in a parochial school in Hamilton County, to one Raymond Parpart, a child of the age of ten years who had not at said time attained and successfully passed the eighth grade as evidenced by certificate of graduation issued by the County Superintendent of Hamilton County, Nebraska, the county in which said Raymond Parpart then and there resided, and said Robert T. Meyer came into court and was informed by the court of the verdict of the jury and asked if he had anything to say why judgment should not be pronounced against him; whereupon defendant
30 showing no good and sufficient cause why judgment should not be pronounced.

It is therefore considered by the court that the defendant, Robert T Meyer, pay a fine of Twenty-five Dollars ($25.00) and the costs of prosecution, taxed at $—, and that he stand committed till such fine and costs are paid.

Whereupon the defendant announced his intention to appeal said cause to the Supreme Court of the State of Nebraska, and the bail

of said defendant is fixed at $200.00, on application of defendant. Sentence is suspended and defendant admitted to bail in the sum of $200.00. Defendant as principal and Fred Klute as surety, entered into recognizance in the penal sum of $200.00 conditioned that the defendant shall diligently prosecute his appeal to the Supreme Court, and abide by the order and judgment of the court, and not depart hence without leave of court.

—— ——, *Judge.*

31 Afterwards on this 16th day of December, 1920, there was filed in this cause an Affidavit, which follows:

In the District Court of Hamilton County, Nebraska.

Case No. 3215.

Calendar, Page No. 138.

THE STATE OF NEBRASKA, Plaintiff,

vs.

ROBERT T. MEYER, Defendant.

Affidavit.

STATE OF NEBRASKA,
York County, ss:

C. E. Sandall, being first duly sworn deposes and says that he is one of the attorneys for the defendant Robert T. Meyer in the above entitled case and action of the State of Nebraska v. Robert T. Meyer; that the said defendant was on the 14th day of December, 1920, in said court convicted of a misdeam-or, to-wit; the violation of the so-called Siman Language Law; that said defendant filed a motion for a new trial which motion was overruled by the court; that thereupon said court pronounced a judgment and sentence upon this defendant and said defendant was fined $25.00 and the costs of prosecution and the defendant entered into a recognizance, in the sum of $200.00 for the appeal of said judgement and conviction to the Supreme Court and gave notice of appeal. And this affiant being further sworn deposes and says that the said defendant Robert T. Meyer intends to prosecute error from the said conviction and judgment to the Supreme Court and that said application and notice of appeal is made in good faith and is not made for delay.

32 C. E. SANDALL.

Subscribed in my presence and sworn to before me this 16th day of December, 1920.

[SEAL] W. D. STEWART,
Notary Public.

Filed Dec. 16, 1920.
J. W. WEEDIN,
Clerk of District Court.

33 STATE OF NEBRASKA,
County of Hamilton, ss:

In the District Court of Hamilton County, Nebraska.

STATE OF NEBRASKA, Plaintiff,

vs.

ROBERT T. MEYER, Defendant.

I, J. W. Weedin, Clerk of the District Court in and for Hamilton County, Nebraska, do hereby certify that I have compared the foregoing copy of the within Transcript with the original papers filed, and Journal entries in the above entitled cause, with the original record thereof, now remaining in said court; that the same is a correct transcript, thereof, and of the whole of said original record.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Aurora, this 24th day of December, A. D. 1920.

[SEAL.] J. W. WEEDIN,
Clerk of the District Court.

No. 21924. Meyer v. State. Transcript. Supreme Court of Nebraska. Filed February 8, 1921. H. C. Lindsay, Clerk.

34 In the District Court of Hamilton County, Nebraska.

THE STATE OF NEBRASKA

vs.

ROBERT T. MEYER, Defendant.

Defendant's Bill of Exceptions.

Hon. E. E. Good, Judge Presiding.

John J. Reinhardt, County Attorney, and Frank E. Edgerton, Attorneys for State;

C. E. Sandall and I. L. Albert, Attorneys for Defendant.

G. M. Baird, Reporter.

35 In the District Court of Hamilton County, Nebraska.

THE STATE OF NEBRASKA, Plaintiff,

vs.

ROBERT T. MEYER, Defendant.

Defendant's Bill of Exceptions.

Be it remembered, That at the September, 1920, term of the Hamilton County, Nebraska, District Court, to-wit, on the 13th day of

December, 1920, that being one of the days of said term, on the trial of the cause of —— —— versus —— —— in the District Court, Hamilton County, Fifth Judicial District of Nebraska, the above named plaintiff, and the above named defendant, each to maintain the issues of their respective parts adduced evidence, and all of said evidence, the objections thereto, with the grounds therefor, all of the oral motions and admissions made at the trial, with all of the rulings of the court on such objections or motions, and all of the exceptions to such rulings made and taken at the time, having been by the said defendant, reduced to writing within the time therefor allowed by the Court in this the defendant's Bill of Exceptions and the same having been served on the attorneys for the plaintiff, for examination and amendment, the said defendant now pary the Honorable Judge before whom the said cause was tried, that this, the Defendant's Bill of Exceptions, may be settled, allowed, signed, sealed and made a part of the record in the aforesaid cause in the aforesaid Court.

Order Allowing and Settling Bill of Exceptions.

Now, on this 13th day of January 1921, this cause coming on further to be heard on the motion of the defendant that this, the defendant's Bill of Exceptions, may be settled, allowed, signed,
36 sealed and made a part of the record in said cause in said court, and it appearing to me, the undersigned Judge, before whom said cause was tried, that said defendant having within the time heretofore allowed by the Court for that purpose, reduced to writing, in this the defendant's Bill of exceptions, all of the evidence adduced or offered on the trial of said cause; all of the objections, with the grounds therefor, made to the admission of evidence; all oral motions and admissions of the parties made at the trial; all of the rulings of the Court on such objections or motions, and all of the exceptions to such rulings made and taken at the time, and, having served the same on the attorneys for the before-named Plaintiff, according to law, for examination and amendment, and the same being now here before me, I, the said Judge, before whom said cause was tried, do hereby certify that this, the Defendant's Bill of Exceptions, contains all of the evidence adduced, or offered on the trial of said cause; all of the objections made to the admission of evidence; all of the oral motions and admissions of the parties made at the trial; all of the rulings of the Court on such objections or motions and all of the exceptions to such rulings made and taken at the time.

Wherefore, I, the said Judge, do hereby settle, allow, and sign this, the Defendant's Bill of Exceptions, and do hereby order that it be made a part of the record in said cause in said court.

E. E. GOOD,
Judge.

37 *Service of Bill.*

Received of Sandall & Wray & Albert & Wagner this proposed draft of a Bill of Exceptions in the foregoing entitled cause for examination and amendment this 4th day of January, 1921.

JOHN J. REINHARDT,
County Attorney, Hamilton County.

I, (we) herewith return the proposed draft of a Bill of Exceptions in the foregoing entitled cause submitted to me (us) on the 4th day of January, 1921, and propose the following amendments: None.

Dated this 4th day of January, 1921.

JOHN J. REINHARDT,
Attorney for Plaintiff.

Reporter's Certificate.

I, G. M. Baird, official reporter, do hereby certify that I reported the evidence taken upon the trial of the foregoing cause; that the transcript herein contains all the evidence adduced or offered upon the trial of said cause, as fully appears from my notes taken at the time and the record of said trial now in my possession.

In Witness Whereof, I have hereunto set my hand at Lincoln, Nebraska, this 22 day of December, 1920.

G. M. BAIRD,
Official Reporter.

Clerk's Certificate.

STATE OF NEBRASKA,
County of Hamilton, ss:

I, J. W. Weedin, Clerk of the District Court within and for said county and state, do hereby certify that this is the original Bill of Exceptions filed in my office in the above entitled cause. In Witness Whereof, I have hereunto set my hand and affixed the seal of said court this 19 day of January, 1921.

[SEAL.]

J. W. WEEDIN,
Clerk District Court.

38 And on the same day there was filed in the office of the Clerk of said Supreme Court, a certain Bill of Exceptions in the words and figures following, to wit:

39 *Index of Testimony.*

Witnesses for State:

Name.	Direct.	Cross.	Redirect.	Recross.
C. F. Brommer	40	43	45	..
" " (recalled)	72	..	..	..
Raymond Parpart	47	53	55	..
Arthur S. Nelson	58	64	..	..
" " (recalled)	74	..	..	..
Frank E. Edgerton	68	..	..	..

Witnesses for Defendant:

C. F. Brommer	76	82	..	..
Robert T. Meyer	83	88	..	..

Index of Exhibits.

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State's Exhibit A	52
B	63

40 *Testimony on Behalf of State.*

C. F. BROMMER, called as a witness on behalf of the State, after being duly sworn, testified as follows:

Direct examination.

By Mr. F. E. Edgerton:

1 Q. State your name.

The defendant objects to the introduction of any testimony, for the reason that the information does not state facts sufficient to constitute or sufficient to charge a crime under the laws of the State of Nebraska.

The Court: I will overrule it at this time.

Defendant excepts.

A. C. F. Brommer.
2 Q. Mr. Brommer, where do you reside?
A. Four and one-half miles northeast of Hampton.
3 Q. In what county?
A. Hamilton county.
4 Q. Nebraska?
A. Yes, sir.
5 Q. What is your occupation or profession?
A. I am pastor of Zion Evangelical Luthern congregation.

6 Q. And does that congregation have a church?
A. Yes, sir.
41 7 Q. And it is located in what county?
A. Hamilton county.
8 Q. Does that congregation also conduct a school?
A. Yes, sir.
9 Q. What is that school called?
A. Called the school of the Evangelical Lutheran Zion's Church.
10 Q. And where is it located?
A. It is located near the church.
11 Q. In what county?
A. Hamilton county, Nebraska.
12 Q. How long have you been pastor of that church?
A. Nine years.
13 Q. And how long has that school been conducted there at the church?
A. I think as long as the congregation has existed, perhaps. I would say over forty years.
14 Q. During the nine years you have been there the school has been conducted there?
A. Yes, sir.
15 Q. And during the past two years who has been the teacher of that school?
A. Robert T. Meyer has been teacher since I was there; I think until September or October of this year.
42 16 Q. Then during all the period of your pastorate he has been the teacher of the school, has he, up to October of this year?
A. Yes, sir.
17 Q. And he was teacher of that school on the 25th day of May, 1920, was he, Mr. Brommer?
A. He was.
18 Q. In the school year beginning in September, 1919, at what hour did your school begin?
A. 9 o'clock.
19 Q. In the forenoon?
A. Yes, sir.
20 Q. And what time in the afternoon?
A. Did it begin?
21 Q. Yes.
A. 1 o'clock.
22 Q. Extending from 9 to 12 and from 1 to 4?
A. Yes, sir.
23 Q. And those have been the hours during the previous eight years of your pastorate?
A. Yes, sir.
24 Q. And you had been closely associated with the school, had you not, Mr. Brommer.
A. Yes, sir, I was.
43 25 Q. That school is sometimes called "Zion's Parochial School," is it not?

A. Yes, sir; "Zion's School," of Evangelical Lutheran Zion's Church.

26 Q. Do you know Raymond Parpart?

A. Yes, sir.

27 Q. He attends that school, does he not?

A. Yes, sir.

Cross-examination.

By Mr. C. F. Sandall:

28 Q. Now, Mr. Brommer, Mr. Meyer was the teacher of Zion's school?

A. Yes, sir.

29 Q. And the school was a parochial school, teaching children the common branches, as required by law and as fixed and directed by the county superintendent?

A. Exactly; yes, sir.

30 Q. You stated, Mr. Brommer, that the school hours were from 9 to 12 in the morning and from 1 to 4 in the afternoon. On May 25, 1920, what were the school hours?

A. From 9 to 12 and from half-past 1 to 4.

31 Q. So those were the school hours?

A. Yes, sir.

32 Q. Your school took up at 9 o'clock in the morning, and was there any intermission in the morning before 12 o'clock?

A. I think a ten-minute recess.

33 Q. And then the school adjourned at 12 o'clock?

A. Yes, sir.

34 Q. And had what you call the noon intermission, or the Noon hour?

A. Yes, sir.

35 Q. And that noon hour continued till 1:30?

A. Yes, sir.

36 Q. And then you had school from 1:30 to 4 o'clock?

A. Yes, sir.

37 Q. Did you have a recess in the afternoon?

A. Perhaps ten minutes.

38 Q. A recess of ten minutes?

A. I think ten minutes; yes, sir.

39 Q. How long had that arrangement prevailed before the 25th of May, 1920?

A. I think it was changed in the January meeting of the Congregation.

40 Q. And that was the governing school board?

A. Yes, sir. We have a school board selected by the congregation, but if an essential change is made they usually refer it to the congregation.

41 Q. And the congregation, together with the governing school board, changed the arrangement sometime in January?

A. Yes, sir.

42 Q. And from that time on, these were the school hours of the school; that is, from 9 to 12 in the forenoon and from 1:30 to 4 in the afternoon?

State objects as already answered.
Objection sustained. Exception.

Redirect examination.

By Mr. F. C. Edgerton:

43 Q. You say the congregation changed the school hours in January?
A. Yes, sir.
44 Q. Do you remember what time in January?
A. The first Monday in January; the regular meeting.
45 Q. And that was by a vote of the congregation?
A. Yes, sir.
46 Q. It was changed from 1 o'clock to 1:30?
A. Yes, sir.
47 Q. And extended to 4 o'clock, the same as before?
A. Yes, sir.

Witness excused.

47 RAYMOND PARPART, called as a witness on behalf of the State, after being duly sworn, testified as follows:

Direct examination.

By Mr. F. E. Edgerton:

48 Q. State your name.
A. Raymond Parpart.
49 Q. How old are you?
A. I am eleven years of age.
50 Q. And where do you live?
A. I live six miles northeast of Hampton.
51 Q. In what county?
A. In Hamilton county.
52 Q. In the State of Nebraska?
A. Yes, sir.
53 Q. Were you born in Hamilton county?
A. Yes, sir.
54 Q. And have you lived all your life in Hamilton county, Nebraska?
A. Yes, sir.
55 Q. What is your father's name?
A. My father's name is Henry Parpart.
56 Q. What grade are you in school?
A. I am in the fifth grade.
57 Q. What school are you attending?
48 A. The Lutheran Zion's Parochial School.

58 Q. And where is that school located, Raymond?
A. One and one-half miles southeast of our place.
59 Q. And is that in Hamilton county, Nebraska?
A. Yes, sir.
60 Q. Do you know Mr. Brommer, who just left the witness stand?
A. Yes, sir.
61 Q. Is he the pastor of that congregation there?
A. Yes, sir.
62 Q. Do you know Mr. Meyer, the defendant, who sits over here (indicating defendant)?
A. Yes, sir.
63 Q. Was he the teacher of that school last year?
A. Yes, sir.
64 Q. How many years have you gone to that school, Raymond?
A. I have went there four years.
65 Q. Did you ever go to the public schools?
A. No sir.
66 Q. You have always gone to that school, have you?
A. Yes, sir.
67 Q. And Mr. Meyer, the defendant, has been your teacher all of that time, up to the present year, has he not?
A. Yes, sir.

49 68 Q. Now, Raymond, do you remember whether or not Mr. Meyer taught you reading in German in that school last year?
A. Yes, sir.
69 Q. Do you remember the 25th of May, the day that I was at the school?
A. Yes, sir.
70 Q. During the time from noon to 1:30, tell the jury whether or not he taught you reading in the German language?
A. Yes, sir.
71 Q. Have you your book here?
A. Yes, sir.

(Witness produces book.)

72 Q. Now on that day, Raymond, school took up at what time?
A. At 1 o'clock.
73 Q. And was it that time that it had been taking up all through the year—at 1 o'clock?
A. I don't exactly know.
74 Q. Do you know whether or not at the beginning of the year, or during the year, that you took up at 9 o'clock in the morning and at 1 o'clock in the afternoon?

Defendant objects as immaterial and not pertaining to any of the issues in the case, and not in support of any of the issues in the case. Objection overruled. Exception.

50 A. Well, from January 1st it started from 9 o'clock to 12 o'clock, and then began at half-past 1 to 4 o'clock.

75 Q. Now, on this day—this 25th day of May, you were reading in that school out of what is called state's exhibit A, that book, were you?

A. Yes, sir.

76 Q. And the class was called by the defendant, Mr. Meyer, was it not?

A. Yes, sir.

77 Q. And you read out of that book?

A. Yes, sir.

78 Q. And in the German language?

A. Yes, sir.

79 Q. And he was the teacher?

A. Yes, sir.

80 Q. Do you know what time of day it was that you were reading there?

A. It was somewhere between 1 o'clock and half-past 1.

81 Q. And all the pupils were in their seats, were they not?

A. Yes, sir.

82 Q. They were studying, and the classes were being called?

A. Yes, sir.

83 Q. And they had all gone to their seats at 1 o'clock?

51 & 52 A. Yes, sir.

84 Q. And between 1 and 1:30 Mr. Meyer, the defendant was teaching the different classes German, was he not—reading?

A. Yes, sir.

85 Q. And you were in one of the classes?

A. Yes, sir.

86 Q. Tell the jury whether that had been the customary book that you had used since about the 1st of January?

A. It had been.

87 Q. I believe you said, Raymond, that you are now in the fifth grade?

A. Yes, sir.

88 Q. And you were in the fourth grade at that time?

A. Yes, sir.

State offers in evidence State's exhibit A, which was received in evidence without objection and is hereto attached.

53 Cross-examination.

By Mr. C. E. Sandall:

89 Q. Raymond, I believe you stated that up to the first of the year the school hours were from 9 to 12 in the forenoon and from 1 to 4 in the afternoon; that is, before the 1st of January?

A. Yes, sir.

90 Q. And after January 1st the school hours were changed from 1 o'clock in the afternoon to 4, to from 1:30 to 4?

State objects as immaterial.

Objection overruled. Exception.

A. Yes, sir.
91 Q. You were in the fourth grade, were you not, at that time?
A. Yes, sir.
92 Q. In the forenoon you were taught exclusively and entirely in the English language?

State objects as immaterial.
Objection overruled. Exception.

A. Yes, sir.
93 Q. And there were the regular studies in arithmetic, reading, geography and that sort of thing, in the forenoon?
A. Not all in the forenoon.
54 94 Q. Of course, some of the studies came in the afternoon, I suppose, but in the forenoon you were taught altogether in the English language, weren't you?
A. Yes, sir.
95 Q. And from 1:30 till 4 o'clock you were taught altogether and entirely in the English language?
A. Yes, sir.
96 Q. So that it was just during the noon hour, from 1 to 1:30, every day, that you were taught in this little book here (State's exhibit A)?
A. Yes, sir.
97 Q. This is one of the books that were taught in that school?
A. Yes, sir.
98 Q. Did you also have this book in the English language?
A. Yes, sir.
99 Q. What is that (indicating State's exhibit A)?
A. That is a German bible history. (Quoting title in German.)
100 Q. What do the other words mean?
A. For the lower classes.
101 Q. A bible history for lower classes?
A. Yes, sir.
102 Q. That is what this is?
A. Yes, sir.
103 Q. And you were taught in this book?
55 A. Yes, sir.
104 Q. Turning to page 25, tell me what that is?
A. Die Himmelsleiter.
105 Q. What does that mean?
A. That means the ladder of Joseph.
106 Q. And that picture—what does that lesson say about that?
A. Joseph's dream.
107 Q. And what are these figures here (indicating)?
A. These represent angels.
108 Q. And what did Joseph dream?

State objects as immaterial and not cross-examination.
Objection sustained. Exception.

Redirect examination.

By Mr. E. E. Edgerton:

109 Q. Raymond, in talking with Mr. Sandall and Mr. Albert this morning they told you to say that school after the first of January began at 1:30, didn't they?
A. Yes, sir.

By Mr. Sandall:

110 Q. Did you talk with me this morning?
A. No, sir.
111 Q. Did you talk with Judge Albert this morning?
A. No, sir.
112 Q. Did you ever talk with Judge Albert?
A. No, sir.

56 Mr. Sandall, continuing:

113 Q. Did you ever see him before you took the witness stand?
A. No, sir.
114 Q. So you had no talk with us at any time as to what your testimony was to be, did you?
A. No, sir.

Mr. Edgerton, resuming:

115 Q. Who was it that told you to say that school began at 1:30, Raymond?

Defendant objects as leading and suggestive.
Objection sustained. Exception.

116 Q. Did some one tell you, in talking to you this morning, that you were to say that school did begin at 1:30 after the first of January?
A. No, sir.
117 Q. No one told you that?
A. No, sir.
118 Q. Wasn't that discussed by you with Mr. Brommer, or with your father, or somebody?
A. No, sir.
119 Q. You didn't talk about that?
A. No, sir.
120 Q. You said, Raymond, that the children were all in their places at 1 o'clock. Why would you say that school did not take up till 1:30?
57 A. The German was from 1 to 1:30.
121 Q. The German was from 1 to 1:30?
A. Yes, sir.
122 Q. With the children all in their places?
A. Yes, sir.

123 Q. Studying?
A. Yes, sir.

By the Court:

124 Q. That is, in the school-room?
A. Yes, sir.

Witness excused.

58 ARTHUR S. NELSON, called as a witness on behalf of the State, after being duly sworn, testified as follows:

Direct examination.

By Mr. F. E. Edgerton:

125 Q. State your name.
A. Arthur S. Nelson.
126 Q. You live in Aurora?
A. I do.
127 Q. What official position do you occupy?
A. County Superintendent.
128 Q. How long have you been county superintendent?
A. It will be four years in January since I took my office.
129 Q. Do you have supervision over the schools in Hamilton County?
A. I have.
130 Q. What schools?
A. Both the public and parochial private schools.
131 Q. Are you acquainted with Zion's Parochial School, northeast of Hampton?
A. I am.
132 Q. Have you ever visited and inspected that school?
A. I have.
133 Q. Who was the teacher there on May 25, 1920?
A. Robert T. Meyer.
134 Q. The defendant here?
A. Yes, sir.
135 Q. How long have you known Mr. Meyer?
59 A. It will be pretty close to four years, I think.
136 Q. Where has he been teaching during those four years?
A. Four miles and a half northeast of Hampton.
137 Q. In this Zion's Parochial School?
A. Yes, sir.
138 Q. The school that belongs to the congregation presided over by Rev. Brommer?
A. Yes, sir.
139 Q. Did you visit and inspect that school in May, 1920?
A. I did.
140 Q. About what time of the day did you arrive there?

A. A little after 12 o'clock.
141 Q. And how long did you stay?
A. I stayed until about 10 or 15 minutes of 2.
142 Q. Do you remember the exact date?
A. May 17, 1920.
143 Q. And you were there from about 5 minutes after 12 until 10 or 15 minutes after 2?
A. Yes, sir.
144 Q. What time did school take up that day?
A. 5 minutes after 1.
145 Q. Where did the pupils go when the school took up?
A. They came up to the front of the room.
146 Q. Did the teacher ring the bell and call them in?
A. I don't remember that he did.
60 147 Q. Do you remember about how many pupils were in that school?
A. About fifty.
148 Q. And did they take their regular seats?
A. They did.
149 Q. What was taught during the first half-hour you were there?

Defendant objects as incompetent, irrelevant and immaterial, not being at the time charged in the information.
Objection overruled. Exception.

A. Reading was taught in the German language.
150 Q. Did you know that little boy, Raymond Parpart?
A. I didn't know him personally.
151 Q. How long did the teaching of reading continue?
A. It was a little after 1:30 that the class closed, as I remember.
152 Q. Were there a number of classes?
A. There were two classes.
153 Q. And they were being taught reading in the German language?
A. Yes, sir.
154 Q. Did you have any talk with Mr. Meyer, the defendant, with reference to it?
A. No, sir; not until recently.
155 Q. Did he make any statement to you with reference to the teaching of German there?
A. No, sir.
156 Q. Do you know what the German language is?
61 A. Yes, sir.
157 Q. And you know that this was being taught in German?
A. Yes, sir.
158 Q. Were you there at any other time, later on that year?
A. I was not.
159 Q. Does the teacher of that school report to you?

State Ex. B.

Pupils Enrolled this Month
(Write the pupils' names in the same numerical order each month.)

1. Length of School Year — 9 — Mos.
2. No. days now taught — 166
3. No. days yet to teach —
4. No. days attendance required by law (2-3 length of term) — 120

Number	Pupils Enrolled this Month	Under Age	Age Grade	(A) Days Present this Mo.	(B) Total Days Present This School Year	(C) No. Days yet to Attend (Subtract B from No. 4)
1	Arthur Boomm	T	1	22	139	
2	Lucille Calloff	7	1	19	121	
3	Allen Cobb	7	1	17	30	
4	Elmer Klute	6	1	20	121	
5	Ruben Meyer	6	1	28	141	
6	Cora Rhode	6	1	16	122	
7	Lester Roehrs	6	1	21	117	
8	Esther Roehrs	6	1	21	117	
9	Irma Roehrs	6	1	18	131	
10	Arthur Serpast	8	2	23	146	
11	Wenzel Roehrs	8	3	2	120	
12	Walter Roehrs	9	3	2	124	
13	Helen Wirth	10	3	13	119	
14	Arnold Driesner	10	4	21	129	
15	Walter Klute	11	4	23	135	
16	Lillie Klute	9	4	23	128	
17	Raymond Serpast	10	4	22	144	
18	Norma Rhode	10	4	17	118	
19	Norma Splittgerber	11	5	18	140	
20	Eugenia Wilhelm	11	6	21	142	
21	Edna Mueller	11	6	22	131	
22	Herbert Klute	12	7	16	136	
23	Leona Meyer	13	8	20	142	
24	Alta Wirth	12	8	11	139	
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QUARTERLY TEST OR REPORT CARD GRADES

Reading	Physiology	Penmanship	Orthography	Mental Arith.	U. S. History	Grammar	Geography	English Comp.	Arithmetic	Drawing	Civics	Bookkeeping	Agriculture	Department

Moulding from York Co.

Discontinued

Transferred to Brighton Co. Ill. Nov. 1st 1915

BE SURE TO FILL IN THE DAYS IN COLUMNS A-B-C.

TEACHER'S MONTHLY REPORT TO COUNTY SUPERINTENDENT

Dist. No. Parochial Teacher R. T. Meyer. Month ending From Apr. 26 to May 28 1920

Form 756—Hammond & Stephens Co., Fremont, Nebr. ANSWER EVERY QUESTION

FILL ALL THE COLUMNS	MALES	FEMALES	TOTAL
1. Total No. enrolled this school year	24	32	56
2. Number attending this month	18	22	40
3. Total days attendance this month			852
Percentage of Attendance			92.9%
4. Average daily attendance (Divide total of No. 3 by No. 6)			33
No. of days taught			23
5. Number neither absent nor tardy			6

6. Number days taught this month 23
7. Number visitors this month 2
8. Are you teaching the effects of stimulants and narcotics —
9. Have you tested the sight and hearing of each pupil once? yes
10. Are you keeping up with work as outlined in course of study? Satisfactorily

PUPILS BETWEEN THE AGES OF 7 AND 16 WHO HAVE NOT ATTENDED SCHOOL TWO-THIRDS OF THE TIME TO DATE

No.	Name	Parent or Guardian	Address, R. F. D.	Reasons if Any Give No. of Exemption

TO THE TEACHER: Please notice, carefully, the following provisions under which a child between the ages of seven and sixteen is exempt from attending school two-thirds of the time that school is in session, as required by the Compulsory Attendance Law.

EXEMPTIONS

1. Where a child, being of the age of fourteen years, is of necessity regularly employed for his own support or those actually dependent upon him.
2. Where the child is physically or mentally incapacitated for the work done in the schools.
3. Where the child lives more than two miles from the school by the nearest practicable traveled road unless free transportation is furnished.
4. Where the child is deaf or blind.

NOTE—This report should be sent to the Director for his approval and signature before it is sent to the County Superintendent. See Article XIV, Sec. 172, Nebraska School Laws.

GENERAL REPORT

1. Have you had physical examination of pupils this year? —
2. Number having defective Eyes — Ears — Nose — Throat — Teeth —
3. Number treated this month for physical defects —
4. Have you complied with the law in teaching and giving the Military and the Flag salutes? yes
5. Has your school a flag and flag pole? yes
6. How many times have you displayed the Flag this month? —
7. How many visits to patrons have you made this month? —
8. Teacher—times tardy—after 8:30? —
9. When does your school close?
   Give date May 28 1920
   (This question is to be answered one month before school closes.)
10. Do you have any vacation this coming Mo? —
    If so, state when —

Remarks to Co. Sup't:

— Teacher.

Do not fail to mail this report, carefully filled out, to the Co. Supt. at the close of each school month.

Approved by —
Director

Defendant objects for the reason that it is not charged in the information that this was a school conforming to the requirements of the compulsory school law.

Obection overruled. Exception.

A. He does.

160 Q. Showing you State's Exhibit B, I will ask you to state what that is.

A. That is a monthly report made by Mr. R. T. Meyer, of the parochial school, District No. 7, from April 26 to May 28, 1920.

161 Q. And is that a part of the records of your office, as County Superintendent?

A. It is.

162 Q. And has been in your possession up until today, has it?

A. Yes, sir.

163 Q. How did you receive that—through the mail, or was it delivered to you?

A. That was sent through the mail.

62 State offers in evidence State's Exhibit B.

Defendant objects to the introduction of State's exhibit B, for the reason that the information does not charge an offence, and that there is no charge in the information that this school was one conforming to the requirements of the compulsory school law.

Objection overruled. Exception.

State's Exhibit B was duly received and read in evidence and is hereto attached:

(Here follows teacher's monthly report to county superintendent, marked page 63.)

64 164 Q. Has Raymond Parpart ever been issued an eighth-grade certificate in this county?

A. No, sir.

Cross-examination.

By Mr. C. E. Sandall:

165 Q. Twenty-three days was the full number of school days during that month, was it, Mr. Nelson?

A. Do you mean the number of days considered in a school month?

166 Q. Yes.

A. Twenty.

167 Q. So that this school was in session three days more than the required number of days under the law?

A. Yes, sir.

168 Q. And Raymond Parpart went to school this month three days more than would be required under the law, as I understand it?

A. No; I couldn't say as to that.

169 Q. Handing you State's exhibit B, will you state what you understand by this paragraph: "4. No. days attendance required by law (two-thirds length of term.)"?

A. That is, the child is required by law to attend two-thirds of the time the school is in session.

65 170 Q. That is, if the school is in session nine months, as shown by "No. 1" on exhibit B, the number of days' attendance required by law would be 120; and if a child attends a nine-minths' school for 120 days he has complied with the requirements of the statute?

A. He has; yes, sir.

171 Q. Now turning down on exhibit B to Raymond Parpart's name, being No. 17, of the list of pupils, what do these figures here represent?

A. It shows that Raymond Parpart went 144 days during that school year, when this report was made, and he went 23 days in this month.

172 Q. He went twenty-three days in this month and during the school year he went 144 days?

A. Yes, sir.

173 Q. These cards are furnished by you to the teachers for them to fill out?

A. Yes, sir.

174 Q. I notice on the other side of exhibit at No. 15: "Are you keeping up with work as outlined in course of study? Substantially." Now, Mr. Nelson, you inspected this school as required by law?

A. I did.

66 175 Q. And I will ask you whether or not, so far as you were able to observe, this school met the requirements of the compulsory education Act?

A. Yes, sir.
176 Q. You found nothing objectionable in this school?
A. I did not.
177 Q. And the teaching of German in this school on the 17th day of May was from 1 o'clock till a very few minutes after 1:30?
A. Five minutes after 1.
178 Q. They commenced five minutes after 1—started a little late that day?
A. It was discontinued about three minutes after 1:30.
179 Q. That was according to your watch, was it, Mr. Nelson?
A. It was according to the clock on the wall.
180 Q. So that they were reading in this Bible History, in German, a minute or two less than thirty minutes?
A. Yes, sir.
181 Q. Now, so far as your records show, Raymond Parpart was taught in the required branches during this year?
A. Yes, sir.
182 Q. The branches required in the fourth grade?
A. Yes, sir.
183 Q. And so far as your records show, Raymond Parpart passed a good grade in the common school branches required by the law?

67 State objects as not the best evidence and immaterial.
Objection sustained. Exception.

184 Q. Raymond Parpart in a pretty fair specimen of the pupils in this school, is he, Mr. Nelson?
A. Yes, sir.
185 Q. The school is of a very high standard, is it not?

State objects as immaterial.
Objection sustained. Exception.

186 Q. I mean, in the English branches?
A. Yes, sir.

Witness excused.

68 FRANK E. EDGERTON, called as a witness on behalf of the State, after being duly sworn, testified as follows:

Direct examination.

By Mr. John J. Reinhardt:

187 Q. State your name.
A. Frank E. Edgerton.
188 Q. You are a resident of Aurora?
A. Yes, sir.
189 Q. For how long a period have you resided here?
A. Five years.
190 Q. What is your business?
A. Lawyer.
191 Q. State whether or not on May 25, 1920, you occupied any official position in this county?

A. I was the county attorney at that time.

192 Q. Were you ever in Zion's Parochial School, near Hampton?

A. I was.

193 Q. On what date were you there?

A. May 25, 1920.

194 Q. At about what time in the day were you there?

A. Between 1 and 1:30.

195 Q. You arrived there about 1 o'clock?

A. A little after 1.

196 Q. Who was teaching that school, Mr. Edgerton?

A. The defendant, Robert F. Meyer.

69 197 Q. Where were the pupils at that time?

A. They were all at their seats and one class was reciting. All but one class were at their seats.

198 Q. One class was reciting?

A. Yes, sir.

199 Q. In what subject were they reciting?

A. In reading; in the German language.

200 Q. Are you familiar with the German language?

A. I am.

201 Q. You have studied German?

A. I have.

202 Q. Was Raymond Parpart in that class that was being taught at that time?

A. He was in one class that recited during that period.

203 Q. How many classes recited during that period that you were there?

A. I don't remember whether it was two or three. I am sure of two.

204 Q. And you heard Raymond Parpart recite?

A. I did.

205 Q. In what subject did you hear him recite?

A. He recited in reading, in the German language.

206 Q. And was he taught at that time from this book which is in evidence, State's exhibit A?

70 A. I think so. I wouldn't be sure of that, but it was some Bible stories that he was reading.

207 Q. At what time did you leave that school?

A. It was shortly before 1:30.

208 Q. When you left, were they still reciting in German?

A. They were still reading in German; reading classes.

209 Q. Did you have any conservation with Mr. Meyer, the defendant here, relative to the conduct of these German classes?

A. Yes, sir.

210 Q. What, is anything, was said relative to this matter?

A. He said that he was teaching German from 1 to 1:30 each day—the reading of the German language, and that it was by orders of the church board that he was doing it.

211 Q. And that he was doing it right along?

A. Yes, sir.

212 Q. Were you ever at the school at any other time?
A. No; that was the only visit.

Witness excused.

State rests.

71 *Motion for Instructed Verdict.*

The defendant now moves the Court to direct a verdict in favor of the defendant, for the following reasons:

(1) That the information does not charge an offence punishable under the law;

(2) That the evidence adduced on behalf of the State does not show any crime punishable under the laws of the State.

(Ruling reserved.)

The State is granted leave to withdraw rest and introduce further testimony.

72 C. F. BROMMER, recalled for further examination on behalf of the State, testified as follows:

Direct examination.

By Mr. F. E. Edgerton:

213 Q. Mr. Brommer, you are the chairman of the board of your church, are you?
A. What do you mean b*b* "chairman"—having supervision over the school and congregation?
214 Q. Yes.
215 *A*. State whether or not Zion's Parochial School has the regular course of study prescribed by the State Superintendent?

Defendant objects for the reason that the additional testimony is not admissible under the information, and for the further reason that the information does not charge facts sufficient to constitute a crime under the laws of the State of Nebraska.
Objection overruled. Exception.

A. Yes, sir.
216 Q. The graduates of your school are accredited the same as those of the public schools?
A. Yes, sir.
217 Q. And the school is conducted throughout so that the education received by the students takes the place of that received in the public schools?
73 A. Yes, sir.
218 Q. Did you get your course of study from the state superintendent, and from the county superintendent?

A. Of course we had a talk with the teacher about it, and he said he had the course of study and was living up to it. We certainly approved of that, because we knew it was our duty to do so and we wanted to do so, and whenever I have visited the school I have always found him to do so.

Witness excused.

74 ARTHUR S. NELSON, recalled for further examination on behalf of the State, testified as follows:

Direct examination.

By Mr. F. E. Edgerton:

219 Q. Mr. Nelson, this Zion's Parochial School uses what course of study?
A. They use one prescribed by the State Superintendent of Public Instruction.
220 Q. And the school is an accredited school, is it?
A. It is.
221 Q. And the graduates get the credits necessary the same as in the public schools?
A. Yes, sir.
222 Q. And it is a school that takes the place of the public school education under the Compulsory Education Act?
A. I don't believe that I just understand your question.
223 Q. The children attend this school the same as a public school, and get the credits necessary?
A. Yes, sir.
224 Q. And when they do attend this school they are excused from public school attendance, under the Compulsory Education Act?
A. Yes, sir.

By Mr. Sandall:

225 Q. Professor Meyer had a life certificate to teach, did he not?
A. Yes, sir.

Witness excused.

State rests.

75 *Motion for Instructed Verdict.*

The defendant renews its motion for a directed verdict in favor of the defendant, for the following reasons:

(1) That the information does not charge an offence punishable under the law;

(2) That the evidence adduced on behalf of the State does not show any crime punishable under the laws of the State.

Motion overruled. Defendant excepts.

76 C. F. BROMMER, called as a witness on behalf of the defendant herein, testified as follows:

Direct examination.

By Mr. L. L. Albert:

226 Q. Mr. Brommer, you have already testified as to your relation to this school, and somewhat about some of its rules. Now I would like for you to be a little more definite about the orders your Board fixed for the school hours for this school in January, 1920.

A. Well, the congregation and the school board decided upon having school hours from 9 to 12, a noon intermission from 12 to half-past 1, and school again from half-past 1 to 4.

227 Q. And from 9 to 12 and from half-past 1 to 4 you taught the regular branches required by the school laws of the State—the secular branches?

A. Yes, sir.

228 Q. Now, I understood your testimony this afternoon to be that in the interim between 1 o'clock and 1.30 they taught scripture lessons there in the German language—is that correct?

A. Yes, sir.

229 Q. That was a part of the policy of your church; that is, the teaching of religion in its parochial schools?

A. Yes, sir; that is the main purpose.

77 230 Q. I wish you would explain to the jury the purpose or policy of the church in respect to teaching these lessons in that language; was it religious instruction or secular instruction—the ultimate purpose?

State objects as leading and suggestive; incompetent, irrelevant and immaterial.

Objection overruled. Exception.

A. We have some members who had perhaps emigrated to this country when they were beyond school age and have not attended school over here, and they have learned enough to carry on their business transactions by means of the English language, but still they have had their instruction in religion in the German language and can not understand an English sermon as well as in German, and they can not give their children religious instruction in the English language as well as in the German; and in order to keep the parents and children in a religious way in contact with each other and not diminish the influence of the parents in the home—for instance, so that the children can take part in the devotional exercises of the parents at home, attend public worship with the parents and worship with them—for that reason we wanted to have the children learn so much German that they could be able to worship with their parents. That was the ultimate and only

78 object we had in view in teaching German.

231 Q. That is, it was a part of the religious instruction of the children?

A. In so far as we can not instruct them in religion without a language. Language is a vessel, you might say, of religion; and you can not impart religious instruction without a language; and since circumstances demanded it, the parents would have lost a good deal of their influence over their children if they had not learned the German religion, and they could not take part in the public services.

232 Q. The point I am getting at is this: If there had been nothing of religion back of it, you would have abandoned the German language in your schools?

State objects as calling for a conclusion.
Objection sustained. Exception.

233 Q. Then we come back to the other question—that the ultimate purpose of this training is religious?

State objects as calling for a conclusion.
Objection overruled. Exception.

A. Exactly.

234 Q. Did you tolerate the teaching of any foreign language in this school, or in any other school, in such a way as to interfere with the regular course prescribed by the school authorities?

79 State objects as calling for a conclusion of the witness.
Objection sustained. Exception.

235 Q. Did the teaching of German during this intermission hour prevent the pupils of this school from the accomplishment of the full quota of work required by the school authorities?

State objects as calling for a conclusion of the witness and no foundation laid.
Objection sustained. Exception.

236 Q. Did you ever observe whether these exercises during intermission in any way interfered with the pupils following the requirements of the school laws of the state?

A. No, sir; I have not.

237 Q. I say, did you ever make any observations to see whether they did or not?

A. Well, I can judge by my own children, and I watched their studies there closely. I have two of them attending school, and I have not noticed any result in that respect.

238 Q. Is it a part of your duty, and do you go over the grades of the pupils attending this school, and observe them to any extent?

A. I don't exactly do that. I have visited the school oc-
80 casionally to see how it was carried on—if it was carried on in a proper way. The congregation always laid great stress on it; that they would have the best school possible for us to have.

239 Q. Were you able to compare it with the public schools?

A. Well, in some respects, yes. Some of the children that first went to the public schools for a few years, and then went to our parochial school.

240 Q. How did it compare with the work of the public school?

State objects as immaterial.
Objection sustained. Exception.

241 Q. Does your church enjoin upon the parents any duty in respect to the training and education of their children?

State objects as immaterial.
Objection sustained. Exception.

242 Q. What can you say of your schools in respect to the patriotic exercises required by the State in this school and other schools—do they conform to the statute in that respect?

States objects as immaterial.
Objection sustained. Exception.

243 Q. Now, you say that the regular school hours were from 9 in the morning to 12 and from 1:30 to 4, and that these exercises or lessons in German were from 1 to 1:30. Were those lessons in German obligatory on your pupils or otherwise?

State objects as immaterial.
Objection overruled. Exception.

A. No, sir.

244 Q. If a child should come to your school there at 1:30 instead of being there at 1, after you had adopted the rule fixing the hours as I have stated, would he have been marked tardy, or would he have been given credit for a full day's attendance?

State objects as immaterial and no proper foundation laid.
Objection sustained. Exception.

245 Q. Would an absence from these exercises from 1 to 1:30 count on the grading of the pupil, in making your reports?

State objects as no proper foundation laid on the part of this witness.
Objection sustained. Exception.

246 Q. You are familiar with the administration of the affairs of the schools, are you not?

A. In general, I am; yes, sir.

247 Q. You know the rules that have been issued for the government of your schools?

A. Yes, sir.

248 Q. And the teacher proceeds along the lines that are laid down by your governing board?

A. Yes, sir.

249 Q. You may state, if you know, whether under the rules of your school, an absence from these exercises which were had from 1 to 1:30 would be taken into account in grading the pupil for his work in the school?

A. It would not.

250 Q. So that you did not regard that half-hour as a part of the school day?

State objects as calling for a conclusion of the witness. Objection sustained. Exception.

Cross-examination.

By Mr. F. E. Edgerton:

251 Q. Your object in teaching this from 1 to 1:30 was to allow thirty minutes for teaching German, was it not?

A. It was, in one way; but the ultimate object was to give religious instruction; in order, as I stated before, to enable the children to worship with their parents; and of course, to do that they had to learn to read German and were taught the German Bible history.

252 Q. And the reason for extending that intermission was that you could teach German in what you thought was a school intermission, for thirty minutes?

A. Yes, sir.

Witness excused.

83 ROBERT T. MEYER, defendant herein, called as a witness on his own behalf, testified as follows:

Direct examination.

By Mr. C. E. Sandall:

253 Q. Mr. Meyer, you are the defendant in this case?

A. Yes, sir.

254 Q. And the teacher in Zion's Parochial School?

A. Yes, sir.

255 Q. How long have you been the teacher of this school?

A. About fifteen and one-half years.

256 Q. You have taught continuously in this school for fifteen years and a half?

A. Yes, sir.

257 Q. How many pupils did you have in this school, approximately?

A. Well, ranging from thirty to about fifty-five.

258 Q. They were young children, were they?

A. Yes, sir.

259 Q. You have a certificate to teach, such as the law requires?

A. Yes, sir.

260 Q. What is that—a life state certificate?

A. A life state certificate; yes, sir.

261 Q. And in teaching the school there, did you communicate with the county superintendent and get from him the course of study for your pupils as provided and required by the State of Ne-
84 braska.

A. I did.

262 Q. I will ask you if you gave this student, Raymond Parpart, the amount of instruction in your school in the English language and

in the secular branches as were provided for in its course of instruction?

A. I aimed to do so; yes, sir.

263 Q. And did he receive instruction in the English language and in the secular branches to the extent and in the amount required by the course of study?

A. I think so.

264 Q. When did your school begin in 1919?

A. The first Monday in September.

265 Q. And how long did it continue?

A. For thirty-six weeks.

266 Q. How many days of school did you have?

A. 180 days.

267 Q. I notice that this card which you hold in your hand, marked State's exhibit B, reports 155 days.

A. May I explain it?

268 Q. I think so; yes, sir.

A. These days that are reported here are the actual days taught. We had a smallpox epidemic and closed the school for a week, and then had a scarlet fever epidemic and closed the school for a
85 week, and then the convention week was taken out, and that is why it reduced the number of days actually taught to 155.

269 Q. How many days during that school year did Raymond Parpart attend your school?

A. 144.

270 Q. During the month of May, 1920, and particularly on May 25, 1920, what were your school hours?

A. From 9 to 12 in the forenoon, excluding a ten-minute intermission or recess; and from 1:30 to 4, excluding a ten-minute intermission for recess during the afternoon.

271 Q. And during these school hours did you teach any language other than the English language?

A. I did not.

272 Q. Did you teach any subject in any language other than the English language?

A. I did not.

273 Q. State whether or not the time of the school day—from 9 to 12 and from 1:30 to 4—was devoted entirely to the study of the secular branches, as provided for by the course of instruction as outlined by the State Superintendent; that is, was the entire time of the school from 9 to 12 and from 1:30 to 4 devoted to teaching secular branches?

A. No, it was not.

86 274 Q. How is that?

A. In the morning we have opening exercises and religious instruction in the English language.

275 Q. For how long a period of time?

A. Including the opening exercises, about 45 minutes.

276 Q. And in the afternoon?

A. In the afternoon everything was secular branches, and from 9:45 to 12 was also everything in secular branches.

277 Q. Was your school visited at times by the county superintendent?

A. It was.

278 Q. Was there any complaint on his part that you did not comply with the Compulsory Education Act?

State objects as immaterial.

Objection sustained. Exception.

279 Q. Now, Mr. Meyer, you had a course of study in the secular branches supplied to you by the county superintendent?

A. Yes, sir.

280 Q. (Referring to State's exhibit P.) I notice here, at No. 15: "Are you keeping up with work as outlined in course of study?" and your answer was "Substantially?"

A. Yes, sir.

281 Q. And you did keep up with the requirements of the Compulsory Education Act?

A. Yes, sir.

87 282 Q. You taught American history?

A. Yes, sir.

283 Q. And civil government?

A. Yes, sir.

284 Q. Did you have patriotic exercises?

A. Yes, sir.

285 Q. Does you- school have a flag and flagpole?

A. Yes, sir.

286 Q. Did you have any flag drill and salute to the flag?

State objects as immaterial.

Objection sustained. Exception.

287 Q. Now, Mr. Meyer, was it obligatory on the part of your pupils to attend the exercises in German during the intermission hour?

A. It was not.

288 Q. Did you say to your students that they were obliged to attend this German instruction during the intermission hour?

State objects as immaterial.

Objection overruled. Exception.

A. I didn't tell that every day.

289 Q. What did you tell them?

A. Well, when this ruling was made by the Board I told them the first day that if anybody did not care to take the German language they were excused from this period.

88 290 Q. And that was the rule that obtained all the way through, was it?

A. Yes, it was.

291 Q. So it was entirely optional with the student, as to whether or not he would take the religious instruction in the German language?

A. Yes, sir.

292 Q. If he didn't attend during these thirty minutes, was he marked tardy or absent?
A. No, sir.
293 Q. Was it taken into consideration in fixing his grades in the secular branches?
A. It was not.

Cross-examination.

By Mr. F. E. Edgerton:

294 Q. Mr. Meyer, the afternoon school time prior to January was from 1 to 4, was it not?
A. Yes, sir.
295 Q. And prior to January, 1920, you devoted the afternoon to studies in English?
A. I did.
296 Q. And when this order of the Board was made, you called the school together the same as before, at 1 o'clock, and taught for thirty minutes in German?
89 A. With the explanation that it was optional, yes.
297 Q. But the students went to their places just the same as they had before January?
A. Yes, sir.
298 Q. And studied and recited during that thirty minutes?
A. Yes, sir.
299 Q. Except that it was in German?
A. Yes, sir.
300 Q. And that change was made for the purpose of allowing the teaching of German for thirty minutes, was it not?
A. Yes, sir.

Witness excused.
Defendant rests.
State rests.

(Taking of testimony concluded.)

90 And on the same day there was issued out of said Supreme Court, a certain Summons in Error, which summons in error was, on said day, duly returned with service thereof endorsed thereon and filed in the office of the Clerk of said Supreme Court. Said summons and return is in the words and figures following, to wit:

91 *Summons in Error.*

THE STATE OF NEBRASKA, *ss:*

To the Sheriff of the County of Hamilton:

You are hereby commanded to notify The State of Nebraska that a petition in error has been filed in the Supreme Court of Nebraska

by Robert T. Meyer asking the reversal of a judgment against him rendered November 19, 1921, in a certain cause in the District Court of Hamilton County, wherein The State of Nebraska was Plaintiff and Robert T. Meyer was defendant and to appear before the Supreme Court, at the city of Lincoln, on the 14th day of March 1921, then and there to do and receive what the said Supreme Court shall order in the premises.

You will make due return of this summons on or before the 21st day of February 1921.

Witness my hand and Seal of said Court, at the city of Lincoln, this 8th day of February A. D., 1921.

[SEAL.]

H. C. LINDSAY,
Clerk,
By P. F. GREENE,
Deputy.

Service of the within Summons in Error acknowledged this 8th day of February, 1921.

STATE OF NEBRASKA,
Defendant in Error,
By CLARENCE A. DAVIS,
Attorney General,
By C. L. DORT,
Asst. Atty. Genl.

Endorsed: General No. 21924. Supreme Court State of Nebraska. Meyer v. State. Summons in Error Supreme Court of Nebraska Filed Feb. 8, 1921. H. C. Lindsay, Clerk.

And afterwards, to wit, on the 11th day of March, 1921, there was filed in the office of the Clerk of said Supreme Court a certain Stipulation and showing in support thereof, in the words and figures following, to wit:

92 In the Supreme Court of the State of Nebraska.

Case No. —.

THE STATE OF NEBRASKA, Plaintiff,

v.

ROBERT T. MEYER, Defendant.

Stipulation.

Come now the parties and, subject to leave of court, hereby stipulate and agree that the appellant Robert T. Meyer, shall have until

the 20th day of April, 1921, in which to prepare, serve and file his brief herein.

Dated February 18, 1921.

ALBERT & WAGNER &
SANDALL & WRAY,
Attorneys for Appellant.
CLARENCE A. DAVIS,
Attorney General.

Endorsed: 21924. Meyer v. State. Stipulation. Supreme Court of Nebraska. Filed Mar. 11, 1921. H. C. Lindsay, Clerk.

In the Supreme Court of the State of Nebraska.

ROBERT T. MEYER, Plaintiff in Error,

vs.

THE STATE OF NEBRASKA, Defendant in Error.

Affidavit.

STATE OF NEBRASKA,
Platte County, ss:

I. L. Albert, being first duly sworn, deposes and says that he is of counsel for the plaintiff in error in the above entitled cause and that for more than three weeks last past has been, and still is suffering from an ailment resembling what is commonly known as the "flu" and which has, and still does incapacitate him almost wholly from engaging in the work of his profession; that his associate in business, August Wagner, Esq., did not participate in the trial of said cause nor in the preparation for said trial and is wholly unacquainted with the questions involved. In consequence whereof the work of preparing a brief therein, so far as the firm of Albert & Wagner is concerned, has devolved upon, and does devolve upon, the affiant.

And, further, affiant saith not.

I. L. ALBERT.

Subscribed and sworn to before me and in my presence this 26th day of February, 1921.

[SEAL.] J. L. BRUNKEN,
Notary Public.

Endorsed: 21924. Meyer v. State. Affidavit. Supreme Court of Nebraska. Filed Mar. 11, 1921. H. C. Lindsay, Clerk.

In the Supreme Court of the State of Nebraska.

ROBERT T. MEYER, Plaintiff in Error,

v.

STATE OF NEBRASKA, Defendant in Error.

Affidavit.

STATE OF NEBRASKA,
York County:

C. E. Sandall, being first duly sworn deposes and says that he is one of counsel for the plaintiff in error in the above entitled cause; that the above entitled cause was filed in the Supreme Court on or about the 8th day of February, 1921; that on or about that time the County of Hamilton employed this affiant and his partner, Judge Wray, to assist the County Attorney of Hamilton County in the prosecution of one Charles W. Wentz charged with embezzling bank funds and with making false reports of the condition of the American State Bank at Aurora to the State Banking Department; that said prosecution was one of great importance to the people of the State of Nebraska and was tried in the District Court of York County, Nebraska, on the 8th day of March; that this affiant's and said Wray's time was almost entirely consumed in the preparation and prosecution of this case from the time of said employment;
94 that the District Court of York County has been in session since the 28th day of February and is still in session and this affiant and his partner, Judge Wray, have been constantly engaged in the preparation and trial of cases since the convening of said term up to the present time. That this affiant had expected Judge I. L. Albert, his asociate in the above entitled case, to prepare the brief therein; that for reasons set forth in affidavit of I. L. Albert filed herewith, this affiant just recently learned that said case would have to be briefed by this affiant and his partner, Judge Wray; that Judge Wray, the associate of this affiant, did not participate in the trial of the above entitled cause nor in the preparation of said trial and is wholly unacquainted with the questions involved. In consequence whereof, the work of preparing a brief in said cause will devolve largely upon this affiant, and this affiant deposes and says that in view of all the foregoing facts and considerations, it is utterly impossible to prepare a brief and file the same within the time originally fixed; and further affiant saith not.

C. E. SANDALL.

Subscribed and sworn to before me and in my presence this 10" day of March, 1921.

[SEAL.]

W. D. STEWART,
Notary Public.

Endorsed: 21924. Meyer v. State. Affidavit. Supreme Court of Nebraska. Filed Mar. 11, 1921. H. C. Lindsay, Clerk.

And on the same day there was rendered by said Supreme Court and entered of record upon the journal thereof, a certain Order in the words and figures following, to wit:

95 Supreme Court of Nebraska, January Term, A. D. 1921.
March 11.

No. 21924.

ROBERT T. MEYER, Plaintiff in Error,

v.

THE STATE OF NEBRASKA, Defendant in Error.

Error to the District Court of Hamilton County.

This cause coming on to be heard upon stipulation of parties for an extension of rule day herein, was submitted to the court; upon due consideration whereof, it is by the court ordered that said stipulation be, and same hereby is, allowed and rule day extended to April 20, 1921.

A. M. MORRISSEY,
Chief Justice.

And afterwards, to wit, May 9, 1921, there was filed in the office of the Clerk of said Supreme Court a certain Motion, in the words and figures following, to wit:

In the Supreme Court of Nebraska.

General Number 21924.

ROBERT T. MEYER, Plaintiff in Error,

vs.

STATE OF NEBRASKA, Defendant in Error.

Motion for Extension of Time to File Brief.

Comes now the State of Nebraska and moves the court to grant an extension of time to July 1st, 1921, within which the State of Nebraska, plaintiff in error, may file its brief in the above entitled cause, for the reason that the Attorney General's Office has so many briefs to write and so much work on hand that it will be unable to print, serve and file its brief in said cause before said date.

STATE OF NEBRASKA,
By C. L. DORT,
Assistant Attorney General.

96 STATE OF NEBRASKA,
County of Lancaster, ss:

I, C. L. Dort, Assistant Attorney General, being duly sworn, depose and say that the facts stated in the foregoing motion are true according to my best knowledge and belief, and that the extension requested is necessary for the proper preparation of the state's brief in said cause.

C. L. DORT.

Subscribed and sworn to before me this 9th day of May, 1921.
[SEAL.] FRIEDA C. BAYERLEIN,
Notary Public.

Received a copy of the foregoing motion on this 3 day of May, 1921, and notice of presentation of same is hereby waived. It is hereby stipulated that the State of Nebraska may have until July 1, 1921, within which to file its brief in said cause.

STATE OF NEBRASKA,
By C. L. DORT,
Asst. Atty. General.
SANDALL & WRAY,
ALBERT & WAGNER,
Attys. for Plff. in Error.

Endorsed: Gen. No. 21924. In The Supreme Court of Nebraska. Robert T. Meyer, Plaintiff in Error, vs. The State of Nebraska, Defendant in Error. Motion and Stipulation for extension of time to file brief of Defendant in Error. Supreme Court of Nebraska. Filed May 9, 1921. H. C. Lindsay, Clerk. Clarence A. Davis, Atty. General. C. L. Dort, Asst. Atty. General for The State.

And on the same day there was rendered by said Supreme Court and entered of record upon the journal thereof, a certain Order in the words and figures following, to wit:

97 Supreme Court of Nebraska, January Term, A. D. 1921.
May 9.

No. 21924.

ROBERT T. MEYER, Plaintiff in Error,

v.

THE STATE OF NEBRASKA, Defendant in Error.

Error to the District Court of Hamilton County.

This cause coming on to be heard upon motion and stipulation of parties for an extension of time within which defendant in error may serve briefs, was submitted to the court; upon due consideration

whereof, it is by the court ordered that said motion and stipulation be, and same hereby is, allowed and defendant in error given until July 1, 1921, to serve briefs.

CHAS. B. LETTON,
Acting Chief Justice.

And afterwards, to wit, on the 12th day of August, 1921, there was filed in the office of the Clerk of said Supreme Court a certain Motion, in the words and figures following, to wit:

In the Supreme Court of the State of Nebraska.

21924.

ROBERT T. MEYER, Plaintiff in Error,

vs.

THE STATE OF NEBRASKA, Defendant in Error.

Motion.

Comes now the plaintiff in error and moves the court that the judgment of the District Court from which error is prosecuted herein be reversed and the cause remanded with directions to the District Court to quash the information, dismiss the case and discharge the accused, the plaintiff in error herein, and as grounds therefor respectively shows the court:

That this proceeding was brought to reverse a judgment of the District Court of Hamilton County, rendered in an action wherein the plaintiff in error was prosecuted for a violation of Chapter 249 of the Laws of 1919, and that after the rendition of said judgment and after the filing of the petition in error herein, the Legislature of said state, at its regular session held in the year 1921, repealed the said statute under which said prosecution was brought, without any saving clause, in consequence whereof, the said statute, so far as concerns this case, is the same though it had never been enacted.

In support of the foregoing proposition, the plaintiff in error respectfully refers the court to the following:

Sutherland on Statutory Const. Sec. 166;
Ball v. Tolman, 87 Am. St. 110;
Pensacola etc. R. R. Co. v. State, 110 Am. St. 67, and authorities cited therein at page 69.

ALBERT AND WAGNER,
SANDALL & WRAY,
Attorneys for Plaintiff in Error.

Endorsed: 21924. Meyer v. State. Motion to reverse and quash. Supreme Court of Nebraska. Filed Aug. 12, 1921. H. C. Lindsay, Clerk.

And afterwards, to wit, on the 12th day of September, 1921, there was filed in the office of the Clerk of said Supreme Court a certain Motion, in the words and figures following, to wit:

99 In the Supreme Court of the State of Nebraska.

No. 21924.

ROBERT T. MEYER, Plaintiff in Error,

vs.

THE STATE OF NEBRASKA, Defendant in Error.

Motion.

State of Nebraska, defendant in error, respectfully moves for additional time to file its brief in the above entitled action on the following grounds:

The case is an appeal from a judgment of conviction of the violation of the provisions of Chapter 249 of the Laws of 1919, the Foreign Language Law, and involves the question whether German could be taught under the provisions of the said law in a parochial school between 1 and 1:30 P. M. by adjusting school hours to include the period from 12 to 1:30 as a recess.

Since the appeal has been taken, Chapter 249 of the Laws of 1919 has been repealed and amended so that the effect of the decision in this case will only be whether plaintiff in error should pay his fine.

Plaintiff in error has a motion pending in this court to reverse the conviction on the ground that the statute under which the conviction was obtained has been repealed. If such motion is granted, there will be no need of defendant in error filing a brief and as plaintiff in error's brief is an exhaustive document of seventy-seven pages, defendant in error has delayed the preparation of his brief until the determination of this motion.

Wherefore, defendant in error asks for an extension of time and requests leave to file his brief thirty days after the determination of plaintiff in error's motion to reverse the appeal in case said motion is dismissed.

CLARENCE A. DAVIS,
Attorney General,
Attorney for State of Nebraska, Defendant in Error.

100 To Albert & Wagner, Sandall & Wray:

You will please take notice that the defendant in error will present the above motion to the Supreme Court of the State of Nebraska at 9 A. M. on the 19th day of September, 1921, or as soon thereafter as counsel can be heard.

CLARENCE A. DAVIS,
Attorney General,
Attorney for Defendant in Error.

Service of the above motion is hereby admitted this 10th day of September, 1921.

ALBERT & WAGNER,
SANDALL & WRAY,
Attorneys for Plaintiff in Error.

Endorsed: 21924. In the Supreme Court of Nebraska. Robert T. Meyer, Plaintiff in Error, vs. The State of Nebraska, Defendant in Error. Motion. Supreme Court of Nebraskaa. Filed Sep. 12, 1921. H. C. Lindsay, Clerk.

And afterwards, to wit, on the 19th day of September, 1921, there was rendered by said Supreme Court and entered of record upon the journal thereof, a certain Order in the words and figures following, to wit:

Supreme Court of Nebraska, September Term, A. D. 1921, Sept. 19.

No. 21924.

ROBERT T. MEYER, Plaintiff in Error,

v.

THE STATE OF NEBRASKA, Defendant in Error.

Error to the District Court of Hamilton County.

This cause coming on to be heard upon motion of defendant in error for an extension of time within which to file briefs herein, was argued by counsel and submitted to the court; upon due consideration whereof, it is by the court ordered that said motion be, and the same hereby is, sustained and defendant in error given until October 30, 1921, to serve and file briefs.

A. M. MORRISSEY,
Chief Justice.

And afterwards, to wit, on the 11th day of October, 1921, there was filed in the office of the Clerk of said Supreme Court a certain request for Argument to Full Court, in the words and figures following, to wit:

In the Supreme Court of Nebraska.

No. 21924.

ROBERT T. MEYER, Plaintiff in Error,

vs.

THE STATE OF NEBRASKA, Defendant in Error.

Inasmuch as the brief of plaintiff in error questions the constitutionality of Chapter 249 of the Laws of 1919, under the Constitution of 1875, defendant in error, in accordance with Rule 22, requests argument before the full bench.

Dated October 11, 1921.

CLARENCE A. DAVIS,
Attorney General,
Attorney for Defendant in Error.

Endorsed: 21924. Meyer v. State. Request for argument to full court. Supreme Court of Nebraska. Filed Oct. 11, 1921. H. C. Lindsay, Clerk.

And afterwards, to wit, on the 2d day of December, 1921, the following, among other proceedings, were had and done in said Supreme Court, to wit:

102 Supreme Court of Nebraska, September Term, A. D. 1921, Dec. 2.

The following cause was argued by counsel and submitted to all members of the Supreme Court, except Judge Rose:

No. 21924 Meyer v. State, Error to Hamilton County.

A. M. MORRISSEY,
Chief Justice.

And afterwards, to wit, on the 16th day of February, 1922, there was rendered by said court and entered of record upon the journal thereof a certain Judgment, in the words and figures following, to wit:

Supreme Court of Nebraska, January Term, A. D. 1922, Feb. 16.

No. 21924.

ROBERT T. MEYER, Plaintiff in Error,

v.

THE STATE OF NEBRASKA, Defendant in Error.

Error to the District Court of Hamilton County.

This cause coming on to be heard upon appeal from the district court of Hamilton county, was argued by counsel and submitted to

the court; upon due consideration whereof, the court finds no error apparent in the record of the proceedings and judgment of said district court. It is, therefore, ordered and adjudged that said judgment of the district court be, and the same hereby is, affirmed at the costs of plaintiff in error, taxed at $—; for all of which execution is hereby awarded, and that a mandate issue accordingly.

Opinion by Flansburg, J.

Letton, J., dissenting separately.

Morrissey, C. J., concurs in dissent.

A. M. MORRISSEY,
Chief Justice.

103 And on the same day there was filed in the office of the Clerk of said Supreme Court, a certain Opinion by said court, pursuant to which the preceding judgment was entered, which opinion is in the words and figures following, to wit:

104 No. 21924.

MEYER

v.

STATE.

Opinion.

Filed February 16, 1922.

1. The Statute (Laws 1919, ch. 249) prohibiting the teaching of foreign languages in schools to children before they have passed the eighth grade, held, a reasonable exercise of the police power of the state.

2. It is within the power of the legislature to say that the education of children in the primary grades shall not be conducted in a foreign language, and to go farther and prevent the teaching of a foreign language to children in the schools until they have become thoroughly grounded in English.

3. Though every individual is at liberty to adopt and to follow, with entire freedom, whatsoever religious beliefs appeal to him, that does not mean that he will be protected in every act he does which is consistent with those beliefs, for when his acts become inimical to the public welfare of the state the law may prohibit them, though they are acts done in pursuance of and in conformity with the religious scruples of that individual.

4. Though the statute prohibits the teaching of a foreign language in a parochial school, even when that language is to be used
105 later in religious worship, held, that such restriction does not

unlawfully interfere with the right of religious freedom in the school, or the incidental right to freely give religious instruction as guaranteed by the Constitution.

5. When, in a parochial school, a foreign language is taught from a book containing a religious text, the fact that the study of the language is mingled with the study of a religious subject does not afford the teacher protection as against the penalty imposed by the statute for the teaching of such language.

6. When the offense is a statutory one and the statute sets forth what elements shall constitute the crime, it is sufficient in the information to describe the crime in the language of the statute.

7. The statute prohibiting the teaching of foreign languages in the schools was intended to prohibit the teaching of such lan-
106 guage whenever the pupils of the school should be assembled for the purpose of receiving instruction, and was not limited, in its aim, to those school hours only which should be set aside to the teaching of the common school branches.

8. Evidence examined, and held sufficient to support the verdict.

107 Heard Before Morrissey, C. J., Aldrich, Day, Dean, Flansburg, and Letton, JJ.

FLANSBURG, *J.*:

In this action the defendant Meyer was charged with the violation of chapter 249, Laws 1919, commonly known as the Siman language law. He was found guilty and fined $25. From such judgment he has appealed to this court.

The law in question provides that no person, individual or as a teacher shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language, and provides that languages, other than the English language, shall not be taught in such schools until after the pupil has attained and successfully passed the eighth grade.

The evidence shows that the defendant was a teacher in a parochial school maintained by the Zion Evangelical Lutheran Congregation, and that between the hour of 1 and 1:30, on May 25, 1920, he taught the German language in this school to a 10-year-old boy, a pupil in the school, who had not passed the eighth grade. The text book used for such teaching was a book of biblical stories, written in the German language. The defendant argues that in teaching the German language in this book he was giving religious instruction according to the faith of the Zion Evangelical Lutheran Congregation. In regard to the purpose of the teaching, the pastor of the church testified: "We have some members who had emigrated to this country when they were beyond school age and have not attended
108 school over here, and they have learned enough to carry on their business transactions by means of the English language,

but still they have had their instruction in religion in the German language and cannot understand an English sermon as well as in German, and they cannot give their children religious instruction in the English as well as in the German; and in order to keep the parents and children in a religious way in contact with each other and not diminish the influence of the parents in the home—for instance, so that the children can take part in the devotional exercises of the parents at home, attend public worship with the parents and worship with them—for that reason we wanted to have the children learn so much German that they could be able to worship with their parents. That was the ultimate and only object we had in view in teaching German."

From this testimony it is clear that the reading from the text book was not, at least solely, a devotional exercise. It was not religious worship, nor was it, primarily, religious instruction in itself. The text book contained biblical stories, but the subject-matter of the text, used for the purpose of studying a language, does not alone control nor indicate the object of the study. The object was, as stated, "to have the children learn so much German that they could be able to worship with their parents."

Defendant argues, then, that the teaching of the German language from this book containing Bible stories served a double purpose, in that it both taught the children the German language and also familiarised them with the Bible stories, and that the teaching, so characterized, was religious instruction. It must be con-
109 ceded, under that argument, that two subjects were being taught—one the German language and one a religious text. If the law prohibited the teaching of the German language as a separate and distinct subject, then, certainly, the fact that such language was taught from a book containing religious matter could not act as a shield to the defendant. The teaching of the German language, as a subject, would come within the direct prohibition of the law, regardless of what text might be used in the book from which the language was taught. It does not appear that the German language is a part of the religion of this church, nor that the services must, according to that particular faith, be rendered in German. It is true that in familiarizing the children with the German language they would become better able to fully understand the services of the church when conducted in German, but, so far as teaching the particular religious beliefs of the church to the children in the school was concerned, such religious teaching could, manifestly, be as fully and adequately done in the English as in the German language.

At this time we are not concerned, then, with the question of whether or not defendant had the right to conduct devotional exercises in the German language. Had that been the sole manner in which the German language was being used, it would have presented an entirely different question. It is not here a question as to the right to hold devotional exercises in the German language, regardless of what the pupils might incidentally attain in learn-

ing and familiarity with that language while in attendance upon such exercises, but it is a question of the direct and intentional teaching of the German language as a distinct subject.

110 The whole question resolves itself to this: Does the statute interfere with the right of religious freedom, by prohibiting the teaching of a foreign language, when that language is taught with the idea and purpose of later using it, at some other time or place or in the school itself, in religious worship?

The salutary purpose of the statute is clear. The legislature had seen the baneful effects of permitting foreigners, who had taken residence in this country, to rear and educate their children in the language of their native land. The result of that condition was found to be inimical to our own safety. To allow the children of foreigners, who had emigrated here, to be taught from early childhood the language of the country of their parents was to rear them with that language as their mother tongue. It was to educate them so that they must always think in that language, and, as a consequence, naturally inculcate in them the ideas and sentiments foreign to the best interest of this country. The statute, therefore, was intended not only to require that the education of all children be conducted in the English language, but that, until they had grown into that language and until it had become a part of them, they should not in the schools be taught any other language. The obvious purpose of this statute was that the English language should be and become the mother tongue of all children reared in this state. The enactment of such a statute comes reasonably within the police power of the state. Pohl v. State, 132 N. E. (Ohio) 20; State v. Bartels, 181 N. W. (Ia.) 508.

111 It is suggested that the law is an unwarranted restriction, in that it applies to all citizens of the state and arbitrarily interferes with the rights of citizens who are not of foreign ancestry, and prevents them, without reason, from having their children taught foreign languages in school. That argument is not well taken, for it assumes that every citizen finds himself restrained by the statute. The hours which a child is able to devote to study in the confinement of school are limited. It must have ample time for exercise or play. Its daily capacity for learning is comparatively small. A selection of subjects for its education, therefore, from among the many that might be taught, is obviously necessary. The legislature no doubt had in mind the practical operation of the law. The law affects few citizens, except those of foreign lineage. Other citizens, in their selection of studies, except perhaps in rare instances, have never deemed it of importance to teach their children foreign languages before such children have reached the eighth grade. In the legislative mind, the salutary effects of the statute no doubt outweighed the restriction upon the citizens generally, which, it appears, was a restriction of no real consequence.

Whether or not the policy of this law is correct is not for the court to say. That was a question exclusively for the legislature. The question for the court is whether the law is reasonable, and not ca-

pricious and aribitrary; whether it was enacted in the interests of the welfare of the state; whether it is a lawful exercise of the police power; in general, whether it is constitutional. If the policy of the law is wrong, the people of the state, through the legisla-
112 ture, or upon their own initiative, can change it.

A thorough knowledge of the German language as would be gained by young children by a course of study in the schools would no doubt, as pointed out in the testimony, make more convenient the matter of religious worship with their parents, whose knowledge of English was limited; but is such a reason sufficient to override the salutary effect and purpose of the statute? If a foreign language can be taught to children of tender years, for the purpose of allowing them to worship in that language, under the guise that such instruction is religious teaching, then the statute is a nullity. Writing, reading, geography, and a variety of other subjects, could as well be called religious subjects whenever the purpose was declared to be to use the knowledge thus attained, as an aid in religious worship.

Though the statute prohibits the study of the German language and may, to an extent, limit the younger children from as freely engaging in religious services, conducted in the German language, as otherwise might be the case, we cannot say that such restriction is unwarranted. The law in no way attempts to restrict religious teachings, nor to mold beliefs, nor interfere with the entire freedom of religious worship.

Whenever the actions of individuals, even though in pursuance of religious beliefs—in this case the teaching in the schools of the German language to children of tender years—are considered as not in harmony with the public welfare, then it is proper that
113 those acts be curbed.

As said by Chief Justice Campbell in In re Frazee, 63 Mich. 396, 405: "We cannot accede to the suggestion that religious liberty includes the right to introduce and carry out every scheme or purpose which persons see fit to claim as part of their religious system. There is no legal authority to constrain belief, but no one can lawfully stretch his own liberty of action so as to interfere with that of his neighbors, or violate peace and good order. The whole criminal law might be practically superseded if, under pretext of liberty of conscience, the commission of crime is made a religious dogma. It is a fundamental condition of all liberty, and necessary to civil society, that all men must exercise their rights in harmony, and must yield to such restrictions as are necessary to produce that result."

Though every individual is at liberty to adopt and follow with entire freedom whatsoever religious beliefs appeal to him, that does not mean that he will be protected in every act which he does which is consistent with those beliefs, for when his acts either disturb the public peace, or corrupt the public morals, or otherwise become inimical to the public welfare of the state, the law may prohibit them, though they are done in pursuance of and in conformity with the religious scruples of the offending individual. 12 C. J. 944, sec.

453; McDowell v. Board of Education, 172 N. Y. Supp. 590; State v. Neitzel, 69 Wash. 567; 43 L. R. A. n. s. 203; Reynolds v. United States, 98 U. S. 145; People v. Ashley, 172 N. Y. Supp. 282;
114 Smith v. People, 51 Colo. 270, 117 Pac. 612, 36 L. R. A. n. s. 158; Owens v. State, 6 Okla. Or. Rep. 110, 116 Pac. 345.

The statute, therefore, which prohibits the teaching of the German language in a parochial school, does not unlawfully interfere with the right of religious freedom in the school, or the incidental right to freely give religious instruction, as guaranteed by the Constitution.

It is urged that the information does not sufficiently charge an offense under the statute. The information is framed in the language of the statute, but it does not set out that the teaching complained of was during regular school hours, nor that the school in which the teaching was done was a school which presented a course of study such as that prescribed by the compulsory education act. The contention that these allegations were necessary is based upon the interpretation of the statute by the holding in Nebraska District, E. L. S. v. McKelvie, 104 Neb. 93. The allegation in the information that the school is a parochial school is alone an allegation which apprises of the fact that it is a school that does present or is legally required to present the course of study mentioned, for parochial schools expressly come within the compulsory education act. Had it been a fact that this school had failed to comply with that act, that would not have absolved it from the duty of recognizing and obeying the provisions of the language law.

As to the contention that the information should have specifically charged that the teaching took place during school hours, it is only necessary to answer that an allegation that the teaching was
115 in school carries with it the necessary implication that such teaching must have been during school hours. In order that any teaching take place "in school," it must take place when the pupils are assembled and when the school is in session. Otherwise, such teaching would not have been "in school," within the generally accepted meaning of the terms so used.

Neither the language law nor the compulsory school act mentions the phrase "regular school hours." Nor is there any direction in either of those statutes as to how many hours a day, or as to what time of day, school shall be in session. The language law declares that certain subjects shall not be taught in school. Obviously, it was intended that such teachings should not take place whenever the pupils of the school should be assembled in the school for the purpose of receiving instruction. So far, then, as it may have been indicated in the former opinion of Nebraska District E. L. S. v. McKelvie, supra, that the law was aimed to apply only to those school hours which should be set apart for the teaching of the so-called common school branches, or set apart as "regular school hours," we believe that opinion should be modified.

When the offense is a statutory one, and the statute sets forth what elements shall constitute the crime, it is sufficient in an information to describe the crime in the language of the statute, as was done in

this case. Philbrick v. State, 105 Neb. 120; 179 N. W. 398; Goff v. State, 89 Neb. 287; Cordson v. State, 77 Neb. 416.

Again, it is insisted that the evidence is insufficient to sup-
116 port the verdict, and that the proof is that the teaching complained of did not take place during school hours. It appears from the evidence that the defendant had been a teacher in this school some eight years, and that the afternoon hours for teaching, during all that period of time, had been from 1 to 4 o'clock. After the decision in the case of Nebraska District E. L. S., v. McKelvie, supra, in which it was said that the statute aimed only at the teaching of foreign languages during "regular school hours," the church authorities, by resolution, changed the afternoon school hours so that they covered the period of from 1:30 to 4 o'clock, instead of from 1 to 4. The morning hours remained the same. Pupils, however, as before, each day assembled at 1 o'clock in the afternoon and were taught German, in the manner we have described, until the hour of 1:30, at which time regular school was said to commence. The defendant testified that attendance by the pupils during the half-hour was not compulsory. However, the attendance for that period was full and regular. We do not see that this, in reality, created any change in the "regular school hours." The court submitted for the jury's determination the question of whether or not the change of hours was a devise to evade the law, and the question of whether the hour from 1 to 1:30 was a part of the teaching hours of the school. We think the instruction was properly given, and, in the light of the evidence, the only verdict which could have been expected was the one returned by the jury, finding the defendant guilty of the offense charged.

The judgment of the lower court is, therefore, affirmed.

117 LETTON, *J.*, dissenting:

Without regard to the conclusion in the case, I dissent from the doctrine of the seventh paragraph of the syllabus and that portion of the opinion expressing the same view. This in effect overrules the very recent opinion of this court in Nebraska District E. L. S., v. McKelvie, 104 Neb. 93. The matter is of grave importance, since it involves the question as to the extent that a legislature may infringe upon the fundamental rights and liberty of a citizen protected by the state and federal constitutions. I am unable to agree with the doctrine that the legislature may arbitrarily, through the exercise of the police power, interfere with the fundamental right of every American parent to control, in a degree not harmful to the state, the education of his child, and to teach it, in association with other children, any science or art, or any language which contributes to a larger life, or to a higher and broader culture.

Educators agree that the period of early childhood is the time that the ability to speak or understand a foreign, or a classic, language is the most easily acquired. Every parent has the fundamental right, after he has complied with all proper requirements by the state as to education, to give his child such further education in

proper subjects as he desires and can afford. As was pointed out in Nebraska District, E. L. S., v. McKelvie, supra, the legitimate object of the statute has been accomplished when the basic and fundamental education of every child in the state has been acquired
118 in the English language, instead of in the language of a foreign country.

The state has the right to manage and control in all particulars schools maintained by taxation, to place other schools under state supervision and to require the same general standards; but it has no right to prevent parents from bestowing upon their children a full measure of education in addition to the state required branches. Has it the right to prevent the study of music, of drawing, of handiwork, in classes or private schools, under the guise of police power? If not, it has no power to prevent the study of French, Spanish, Italian, or any other foreign or classic language, unless such study interferes with the education in the language of our country, prescribed by the statute.

In State v. Ferguson, 95 Neb. 63, 73, it is said in the opinion by Judge Fawcett: "The public school is one of the main bulwarks of our nation, and we would not knowingly do anything to undermine it; but we should be careful to avoid permitting our love for this noble institution to cause us to regard it as "all in all" and destroy both the God-given and constitutional right of a parent to have some voice in the bringing up and education of his children."

We have said that the legislature cannot, under the guise of police regulation, arbitrarily invade personal rights, and that "The test when such regulations are in question is whether they have some relation to the public health or public welfare, and whether such is, in fact, the end sought to be obtained." Smiley v. MacDonald, 42 Neb. 5; In re Anderson, 69 Neb. 686; Union P. R. Co. v.
119 State, 88 Neb. 247; State v. Withnell, 91 Neb. 101.

Since the restriction cannot be supported on the ground of "public welfare," it is now sought to sustain it on the ground of "public health." The supposition that this restriction in the statute might have been inserted in the interest of the health of the child is evidently an afterthought. It was not suggested by counsel either in the briefs or at the hearing. It is patent, obvious, and a matter of common knowledge that this restriction was the result of crowd psychology; that it is a product of the passions engendered by the World War, which had not had time to cool. The idea that the legislature had in mind the protection of the child from over study, or lack of recreation, seems far-fetched, when it is realized that outside of city districts only 12 weeks' school attendance in a year is required by the law, and that in city districts the hours of study for young children are carefully limited by the boards of education. The statute was construed and upheld (except as to the restriction now reinstated by the majority opinion) in the opinion in the McKelvie case written by me. It was there held (with that exception) to be a proper and salutary measure, upon substantially the same grounds as are now suggested in the majority opinion. The doctrine of stare decisis should be applied, and the former opinion adhered to.

Legislatures have not always respected personal rights. In State v. Junkin, 85 Neb. 1, this court was compelled to hold invalid a law restricting free speech in a public assembly. Resistance to the arbitrary power of kings was necessary in days gone by. It seems now to be necessary to resist encroachments by the legislature
120 upon the liberty of the citizen protected by the Constitution. Morrissey, C. J., concurs in this dissent.

121 And afterwards, to wit, on the 8th day of March, 1922, there was filed in the office of the Clerk of said Supreme Court, a certain Motion for Rehearing in the words and figures following to wit:

122 In the Supreme Court of Nebraska.

ROBERT T. MEYER, Plaintiff in Error,

v.

THE STATE OF NEBRASKA, Defendant in Error.

Motion for Rehearing.

Comes now the defendant and plaintiff in error, Robert T. Meyer, and moves the court for a rehearing (opinion filed February 16th, 1922) for the following reasons:

I.

The court erred in deciding and holding that the statute (Laws 1918, ch. 249) prohibiting the teaching of foreign languages to children before they have passed the eighth grade is a reasonable exercise of the police power of the state.

II.

The court erred in deciding and holding that though the statute prohibits the teaching of a foreign language in a parochial school, even though that language is to be used later in religious worship, such restriction does not unlawfully interfere with the right of religious freedom in the school, or the incidental right to freely give religious instruction as guaranteed by the Constitution.

III.

The court erred in deciding and holding that when, in a parochial school, a foreign language is taught from a book containing a religious text, the fact that the study of the language is mingled with the study of a religious subject does not afford the teacher protection as against the penalty imposed by the statute for the teaching of such language.

IV.

The court erred in deciding and holding that the information upon which the conviction is based sufficiently charges a crime.

V.

The court erred in deciding and holding that the statute
123 prohibiting the teaching of foreign languages in the schools was intended to prohibit the teaching of such language whenever the pupils of the school should be assembled for the purpose of receiving instruction, and was not limited, in its aim, to those school hours only which should be set aside to the teaching of the common school branches.

VI.

The court erred in deciding and holding that a statute which prohibits, under a penalty, the teaching of a foreign language in a parochial school at any time when the pupils are assembled to receive instruction is a valid exercise of the police power of the state.

VII.

The court erred in deciding and holding that such statute, as construed by the court in the majority opinion filed herein, does not operate to deprive the plaintiff in error and other persons of their liberty or property without due process of law nor as an unreasonable restraint upon the liberty of the plaintiff in error and other persons in contravention of the Fourteenth Amendment to the Constitution of the United States or of Section 3, Article I of the Constitution of the State of Nebraska.

VIII.

The judgment of this court, affirming the judgment of conviction of the plaintiff in error, contravenes the Fourteenth Amendment to the Constitution of the United States in that it operates to deprive the plaintiff of his liberty and property without due process of law and as an unreasonable restraint upon his liberty and as a denial of the equal protection of the law.

IX.

The said statute is discriminatory in that it unreasonably discriminates between those teaching a foreign language in a parochial or private school and those teaching such languages to pupils privately.

X.

The court erred in deciding and holding that the said statute does not violate the constitutional guarantee of religious liberty.

124 XI.

The court erred in assuming that the question of the validity of the statute turned upon whether it violates the constitutional guarantee of religious liberty, which assumption appears from the following taken from the body of the opinion:

"The whole question resolves itself to this: Does the statute interfere with the right of religious freedom by prohibiting the teaching of a foreign language, when that language is taught with the idea and purpose of later using it, at some other time or place or in the school itself, in religious worship?"

XII.

It should more fully appear that the court considered and decided the principal question raised in this case, which is: Does the statute operate to deprive the plaintiff in error of his liberty or property without due process of law, as an unreasonable restraint upon his liberty, or as an unreasonable and unjust discrimination against him, contrary to the Fourteenth Amendment to the Constitution of the United States, and to Section 3, Article I of the Constitution of the State of Nebraska?

XIII.

The court in its opinion does not expressly pass upon the Federal question raised in the case at bar.

XIV.

The court in its opinion does not pass upon the proposition raised in our original brief, page 31, that the Siman Law discriminates against him as a teacher and destroys the occupation of the defendant, which calling is protected by the Fourteenth Amendment to the Federal Constitution.

XV.

Because the Siman Law is unconstitutional and violates Section 1 of the Fourteenth Amendment to the Constitution of the United States.

XVI.

125 The court did not in its opinion discuss the federal question raised in the case, and omitted all reference to Proposition No. 2, discussed in original brief of plaintiff in error, pages 23 to 45, to wit:

"The Siman Law is unconstitutional and violates Section One (1) of the Fourteenth Amendment to the Constitution of the United States."

XVII.

The court erred in its opinion in the case at bar in overruling Nebraska Dist. E. L. S. v. McKelvie, 104 Neb. 93, and holding that the defendant was guilty of a crime in complying with the Siman language law as construed by this court in Neb. Dist. Evan. L. S. v. McKelvie, 104 Neb. 93, because the construction of the law there announced became as much a part of the statute as if enacted by the legislature and fully protected the defendant until overruled in the case at bar. Defendant cannot lawfully be convicted under the Federal Constitution by a retroactive construction of the law, and deprived of his liberty by overruling the former construction of the law upon which he relied.

XVIII.

The court erred in holding that there was a question for the jury, because there is no testimony in the record to sustain the assumption of the court that the change of school hours was "a device to evade the law," the undisputed evidence and the concession in the brief of the attorney general, page 2, being that "upon learning of the decision and the court's construction of the law (104 Neb. 93 supra) in January, 1921, the parochial school near Hampton, Nebraska, maintained by the Evangelical Luther-n Congregation by vote of its board changed its school hours." The change in school hours was made in order to comply with the decision of this court, and the court erred in assuming that it was "a devise to evade the law" when in fact it was a movement to comply with the construction of the law placed upon it by this court in 104 Neb. 93, supra, which construction became as much a part of the act as the text itself.

XIX.

Instruction No. 8 is erroneous and not based upon any evidence in the case.

126

SANDALL & WRAY,
ALBERT & WAGNER,
Attorneys for Plaintiff in Error.

Endorsed: 21924. In the Supreme Court of Nebraska. Robert T. Meyer, Plaintiff in error, v. The State of Nebraska, Defendant in error. Motion for rehearing. Supreme Court of Nebraska. Filed Mar. 8, 1922. H. C. Lindsay, Clerk.

And afterwards, to wit, on the 14th day of March, 1922, there was filed in the office of the Clerk of said Supreme Court a certain Motion, in the words and figures following, to wit:

In the Supreme Court of Nebraska.

General Number 21924.

ROBERT T. MEYER, Plaintiff in Error,

v.

THE STATE OF NEBRASKA, Defendant in Error.

Appeal from the District Court of Hamilton County, Hon. E. E. Good, Judge.

Motion for Oral Argument and to Withhold Mandate.

Sandall & Wray, York, Nebraska;
Albert & Wagner, Columbus, Nebraska,
Attorneys for Plaintiff in Error.
Clarence A. Davis, Attorney General;
Mason Wheeler, Assistant Attorney General,
Attorneys for Defendant in Error.

Motion.

The plaintiff in error moves the court:

1. That an oral argument be granted on the motion for rehearing and that the same be heard before the court on March 24th, 1922, the date set for submission of the case involving the constitutionality of the Reed-Norval Language Act, of the 1921 session.

2. That in the event the judgment of affirmance in the case at bar be adhered to, an order be entered directing that the mandate be withheld for a reasonable time to enable the plaintiff in error
127 to apply for a writ of error for a review of the record herein by the Supreme Court of the United States.

SANDALL & WRAY,
ALBERT & WAGNER,
Attorneys for Plaintiff in Error.

Endorsed: 21924. Meyer v. State. Motion. Supreme Court of Nebraska. Filed Mar. 14, 1922. H. C. Lindsay, Clerk.

And afterwards, to wit, on the 20th day of March, 1922, there was rendered by said Supreme Court and entered of record upon the journal thereof, a certain Order in the words and figures following, to wit:

Supreme Court of Nebraska, January Term, A. D. 1922, March 20.

No. 21924.

ROBERT T. MEYER, Plaintiff in Error,

v.

THE STATE OF NEBRASKA, Defendant in Error.

Error to the District Court of Hamilton County.

This cause coming on to be heard upon motion of plaintiff in error for leave to make oral argument on motion for rehearing heretofore filed herein, was submitted to the court; upon due consideration whereof, it is by the court ordered that said motion for leave to make oral argument on motion for rehearing be, and same hereby is, overruled.

A. M. MORRISSEY,
Chief Justice.

And on the same day there was rendered by said Supreme Court and entered of record upon the journal thereof, a certain Judgment and Order in the words and figures following, to wit:

128 Supreme Court of Nebraska, January Term, A. D. 1922, March 20.

No. 21924.

ROBERT T. MEYER, Plaintiff in Error,

v.

THE STATE OF NEBRASKA, Defendant in Error.

Error to the District Court of Hamilton County.

This cause came on to be heard upon motion of plaintiff in error for a rehearing herein, in which motion complaint is made that we did not pass upon one of the questions directly involved, namely whether the act upon which the information herein is based and the judgment of conviction rendered thereon contravenes the 14th Amendment to the Constitution of the United States. While the opinion filed does not in express terms refer to that question, yet it seems to us it necessarily disposes of it. We there held that the act in question was a valid exercise of the police power of the state, that is to say, that it does not operate to deprive any person, especially the plaintiff in error, of his liberty or property without due process of law nor as an unreasonable restraint upon his liberty nor to deny him the equal protection of the law. It is not an unreasonable restraint upon any lawful pursuit nor upon the religious liberty of any person. If it

did any of those things, then, as we view it, the judgment of conviction could not be upheld. Hence, our holding that the statute is a valid exercise of the police power of the state, that the information in this case based thereon charges a crime, and that the judgment of conviction based on such information is affirmed necessarily amounts to a holding that the statute does not contravene the 14th Amendment to the Constitution of the United States. Upon due consideration whereof, it is by the court ordered and adjudged that no probable error appearing in the judgment of this court heretofore entered herein, said motion for rehearing be, and same hereby is, overruled and a rehearing herein denied.

A. M. MORRISSEY, *Chief Justice.*

129 And afterwards, to wit, on March 24, 1922, there was filed in the office of the Clerk of said Supreme Court of Nebraska, a certain Petition for a Writ of Error, which said original petition for a writ of error, with the allowance thereof endorsed thereon, marked Exhibit "A" is attached hereto and forms a part of the return to the writ of error herein.

130 EXHIBIT A. H. C. Lindsay, Clerk.

In the Supreme Court of the State of Nebraska.

ROBERT T. MEYER, Plaintiff in Error,

vs.

THE STATE OF NEBRASKA, Defendant in Error.

Petition for Writ of Error.

Considering himself aggrieved by the final decision of the Supreme Court of the State of Nebraska in rendering judgment against him in the above entitled cause, the plaintiff in error hereby prays for a writ of error from said decision and judgment to the United States Supreme Court and an order fixing the amount of a supersedeas bond. Assignment of errors herewith.

I. L. ALBERT,
SANDALL & WRAY,
ALBERT & WAGNER,
Attorneys for Plaintiff in Error.

STATE OF NEBRASKA, *ss:*

Suprene Court.

Let the writ of error issue upon the execution of a bond by Robert T. Meyer to the State of Nebraska in the sum of Five Hundred Dollars, said bond, when approved, to act as a supersedeas.

Dated this 24 day of Mar. 1922.

A. M. MORRISSEY,
Chief Justice of the Supreme Court
of the State of Nebraska.

[Endorsed:] 21924. Meyer v. State of Nebraska. Petition for a writ of error. Supreme Court of Nebraska. Filed Mar. 24, 1922. H. C. Lindsay, Clerk.

131 And on the same day there was filed in the office of the Clerk of said Supreme Court a certain Assignment of Errors, which said original assignment of errors, marked Exhibit "B," is attached hereto and forms a part of the return to the writ of error herein.

132 EXHIBIT B. H. C. Lindsay, Clerk.

In the Supreme Court of the State of Nebraska.

ROBERT T. MEYER, Plaintiff in Error,

vs.

THE STATE OF NEBRASKA, Defendant in Error.

Assignment of Errors.

Now comes the above named plaintiff in error and files herewith his petition for a writ of error, and says that there are errors in the records and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court makes the following assignment:

The Supreme Court of Nebraska erred in deciding and holding that Chapter 249 of the Laws of 1919 of the State of Nebraska was valid. The validity of said chapter was denied and drawn in question by plaintiff in error on the ground of its being repugnant to the Constitution of the United States and in contravention thereof.

The said errors are more particularly set forth as follows:

First. That the Supreme Court of Nebraska in its decision and judgment erred in affirming the judgment of the court below, for the reason that the statute of the State of Nebraska upon which the prosecution herein bases, being Chapter 249 of the Laws of 1919 of the State of Nebraska, is invalid and unconstitutional and in violation of Section One of the Fourteenth Amendment to the Constitution of the United States.

Second. That the Supreme Court of Nebraska erred in deciding and holding that said Chapter 249 of the Laws of 1919 of the State of Nebraska does not deprive the plaintiff in error of his liberty or property without due process of law, nor operate as an unreasonable restraint on his liberty.

Third. That the Supreme Court of Nebraska erred in deciding and holding that said Chapter 249 of the Laws of 1919 of the State of Nebraska does not abridge the privileges and immunities of citizens of the United States, especially those of the plaintiff in error.

133 Fourth. The Supreme Court of Nebraska erred in deciding and holding that said Chapter 249 of the Laws of 1919 of the State of Nebraska is valid exercise of the police power of the state.

For which errors, the plaintiff in error, Robert T. Meyer, prays that the judgment of the Supreme Court of Nebraska, dated March 20th, 1922, be reversed and a judgment rendered in favor of the plaintiff in error for costs.

I. L. ALBERT,
SANDALL & WRAY,
ALBERT & WAGNER,
Attorneys for Plaintiff in Error.

[Endorsed:] 21924. Meyer v. State of Nebraska. Assignments of Error. Supreme Court of Nebraska. Filed Mar. 24, 1922. H. C. Lindsay, Clerk.

134 And on the same day the Honorable A. M. Morrissey, Chief Justice of the Supreme Court of Nebraska, entered an allowance of a writ of error herein and fixed a supersedeas bond in the sum of $500, which said allowance was entered upon the journal of said court and is in the words and figures following, to wit:

135 Supreme Court of Nebraska, January Term, A. D. 1922, March 24.

Be it remembered, That on this, the twenty-fourth day of March, 1922, before the Honorable A. M. Morrissey, Chief Justice of the Supreme Court of the State of Nebraska, sitting at Chambers, the following proceedings were had and done:

No. 21924.

ROBERT T. MEYER, Plaintiff in Error,

v.

THE STATE OF NEBRASKA, Defendant in Error.

Error to the District Court of Hamilton County.

And now on this twenty-fourth day of March, 1922, this cause coming on for hearing upon the petition for writ of error and the assignment of errors filed in this court, was submitted to the undersigned, as Chief Justice of the Supreme Court of the State of Nebraska; upon due consideration whereof, it is ordered that writ of error as prayed be allowed and that citation be directed to the State of Nebraska, defendant in error herein, for its due presence in the Supreme Court of the United States, and that bond on said writ of error be given in the sum of five hundred dollars ($500.00), and when filed same shall operate as a supersedeas.

A. M. MORRISSEY,
Chief Justice.

136 And afterwards, to wit, on March 25, 1922, there was issued by the Honorable the Clerk of the District Court of the United States for the District of Nebraska, a certain Writ of Error, which said original writ of error with the allowance thereof by the Honorable A. M. Morrissey, Chief Justice of the Supreme Court of the State of Nebraska endorsed thereon, is marked Exhibit "C," attached hereto, and forms a part of the return to said writ.

137 EXHIBIT C. H. C. Lindsay, Clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Nebraska, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Robert T. Meyer, plaintiff in error, and The State of Nebraska, defendant in error, wherein was drawn in question the validity of chapter 249 of the Laws of 1919 of the State of Nebraska on the ground of its being repugnant to the constitution of the United States particularly to the Fourteenth Amendment thereto, and the decision was in favor of its validity, a manifest error hath happened to the great damage of said Robert T. Meyer, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 25th day of March, in the year of our Lord one thousand nine hundred and twenty-two.

[Seal of District Court of the United States, District of Nebraska, Lincoln Division.]

R. C. HOY,
Clerk District Court of the United States,
District of Nebraska,
By J. H. McCLAY,
Deputy.

Allowed, March 25, 1922.
A. M. MORRISSEY,
Chief Justice Supreme Court of Nebraska.

[Endorsed:] 21924. Meyer v. State of Nebraska. Writ of Error. Supreme Court of Nebraska. Filed Mar. 25, 1922. H. C. Lindsay, Clerk.

138 And on the same day, to wit, March 25, 1922, there was issued out of the Supreme Court of Nebraska, a certain Citation, which said original citation with acceptance of service thereof endorsed thereon, was on said day duly returned and filed in the office of the Clerk of said Supreme Court, marked Exhibit "D," attached hereto, and forms a part of the return to the writ of error herein.

139 EXHIBIT D. H. C. Lindsay, Clerk.

In the Supreme Court of the United States.

ROBERT T. MEYER, Plaintiff in Error,

v.

THE STATE OF NEBRASKA, Defendant in Error.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the State of Nebraska, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington, D. C. within thirty days from the date hereof pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Nebraska wherein Robert T. Meyer is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of Nebraska, this 25th day of March, 1922.

A. M. MORRISSEY,
Chief Justice of the Supreme Court of Nebraska.

Attest:

[Seal Supreme Court of Nebraska.]

H. C. LINDSAY,
Clerk Supreme Court of Nebraska.

We, the attorneys of record for the defendant in error in the above entitled cause, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

CLARENCE A. DAVIS,
Attorney General of Nebraska,
Attorney for State of Nebraska, Defendant in Error.

March 25, 1922.

[Endorsed:] 21924. Meyer v. State of Nebraska. Citation. Supreme Court of Nebraska. Filed Mar. 25, 1922. H. C. Lindsay, Clerk.

140 And on said day, to wit, March 25, 1922, there was filed in the office of the Clerk of said Supreme Court, a certain Supersedeas bond in the sum of $500, with the approval of the Chief Justice of said Supreme Court of Nebraska thereon, a copy of said supersedeas bond and said approval of the Chief Justice aforesaid, is marked Exhibit "E," attached hereto, and forms a part of the return to the writ of error herein.

141 EXHIBIT E. H. C. Lindsay, Clerk.

In the Supreme Court of the State of Nebraska.

ROBERT T. MEYER, Plaintiff in Error,

vs.

THE STATE OF NEBRASKA, Defendant in Error.

Bond.

Know all men by these presents that we, Robert T. Meyer of the County of Pierce, State of Nebraska, as principal, and Peter Matuschka, of the County of Lancaster, State of Nebraska, and W. G. Stamm, of the County of Lancaster, and State of Nebraska, as sureties, are held and firmly bound unto the State of Nebraska in the sum of Five hundred Dollars to be paid to it and for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, successors, representatives and assigns, jointly and severally, firmly by these presents.

Sealed withour seals and dated this 25" day of March, 1922.

Whereas, the above named plaintiff in error seeks to prosecute his writ of error to the United States Supreme Court to reverse the judgment rendered in the above entitled cause by the Supreme Court of the State of Nebraska.

Now therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute his said writ of error to the effect and answer all costs and damages that have been or may

be adjudged against him if he shall fail to make good his plea, then this obligation to be void; otherwise, to remain in full force and effect.

This bond is to act as a supersedeas bond.

ROBERT T. MEYER,
Principal.
PETER MATUSCHKA,
W. G. STAMM,
Sureties.

142 STATE OF NEBRASKA,
County of Lancaster, ss:

Peter Matuschka, being first duly sworn, deposes and says that he is of lawful age and a citizen of the State of Nebraska and knows the contents of the foregoing instrument, to which he has attached his name, and that he is worth the sum of $1,000.00 over and above all debts, liabilities and exemptions.

PETER MATUSCHKA.

Subscribed and sworn to before me this 25 day of March 1922.

[SEAL.] H. C. LINDSAY,
Clerk Supreme Court.

STATE OF NEBRASKA,
County of Lancaster, ss:

W. G. Stamm, being first duly sworn, deposes and says that he is of lawful age and a citizen of the State of Nebraska and knows the contents of the foregoing instrument, to which he has attached his name, and that he is worth the sum of $1,000.00 over and above all debts, liabilities and exemptions.

W. G. STAMM.

Subscribed and sworn to before me this 25 day of March 1922.

[SEAL.] H. C. LINDSAY,
Clerk Supreme Court.

Bond approved and to operate as a supersedeas.

A. M. MORRISSEY,
Chief Justice of the Supreme Court of Nebraska.

Endorsed: 21924. Meyer v. State of Nebraska. Supersedeas bond. Supreme Court of Nebraska. Filed Mar. 25, 1922. H. C. Lindsay, Clerk.

143 And on said day there was filed in the office of the Clerk of said Supreme Court, a certain Præcipe for a transcript of the record herein to be prepared as a return to the writ of error issued herein, which said original præcipe with proof of service thereof endorsed thereon, is marked Exhibit "F", attached hereto, and forms a part of the return to said writ of error.

144 EXHIBIT F. L. C. Lindsay, Clerk.

In the Supreme Court of the State of Nebraska.

ROBERT T. MEYER, Plaintiff in Error,

v.

THE STATE OF NEBRASKA, Defendant in Error.

Præcipe.

To the Clerk of the above Court:

The above-named plaintiff in error hereby requests that you furnish him with a transcript of the following papers, files and records in the above entitled cause:

A copy of the opinion of this court in said cause.

A copy of the opinion on motion for rehearing.

A copy of the motion for rehearing.

A copy of the transcript and record from the district court beginning with the information filed in said court on the 3d day of September, 1920, including bill of exceptions.

A copy of the record of all proceedings in the supreme court, including petition in error.

The original petition for writ of error, and assignment of errors, with allowance of writ of error.

The original writ of error with its allowance.

A copy of the bond and its approval.

Original citation with service thereon.

I. L. ALBERT,
SANDALL & WRAY,
Attorneys for Plaintiff in Error.

We hereby acknowledge service of the foregoing præcipe this 25th day of March, 1922.

CLARENCE A. DAVIS,
Atty. General,
Attorneys for Defendant in Error.

[Endorsed:] 21924. Meyer vs. State of Nebraska. Præcipe for record. Supreme Court of Nebraska. Filed Mar. 25, 1922. H. C. Lindsay, Clerk.

145 *Certificate of Lodgment.*

STATE OF NEBRASKA, *ss:*

Supreme Court.

I, H. C. Lindsay, Clerk of said court, do hereby certify that there was lodged with me as such clerk on March 25, 1922, in the matter of

Robert T. Meyer, plaintiff in error, v. The State of Nebraska, defendant in error, No. 21924;—

1. The original supersedeas bond of which a copy is herein set forth.

2. Two copies of the writ of error, as herein set forth,—one for the defendant, and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Lincoln, this April 7, 1922.

[Seal of Supreme Court of Nebraska.]

H. C. LINDSAY,
Clerk Supreme Court of Nebraska.

146 *Authentication of Record.*

STATE OF NEBRASKA, *ss:*

Supreme Court.

I, H. C. Lindsay, clerk of said court, do hereby certify that the foregoing pages numbered from 1 to 144, inclusive, are a true, full and complete transcript of such parts of the record and proceedings in the case of Robert T. Meyer, plaintiff in error, v. The State of Nebraska, defendant in error, No. 21924, and also of the opinion of the court rendered therein, as are designated in the præcipe filed in my office requesting a transcript to be prepared as a return to the writ of error issued by the Supreme Court of the United States in said case, as the same now appear on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Lincoln, this April 7, 1922.

[Seal of Supreme Court of Nebraska.]

H. C. LINDSAY,
Clerk Supreme Court of Nebraska.

147 *Return to Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

Supreme Court of Nebraska.

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings of the within entitled case as requested in the præcipe attached hereto, together with all things concerning the same.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the Supreme Court of Nebraska in the City of Lincoln, this April 7, 1922.

[Seal of Supreme Court of Nebraska.]

H. C. LINDSAY,
Clerk Supreme Court of Nebraska.

Transcript	24.00
Bond & seal	1.50
Express	.50
	26.00

148 In the Supreme Court of the United States.

ROBERT T. MEYER, Plaintiff in Error,

vs.

STATE OF NEBRASKA, Defendant in Error.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled cause that the book printed in a foreign language and attached to the Bill of Exceptions, marked Exhibit A, is not necessary for the consideration of the assignment of errors in said cause, and that, in order to save the expense of translating and printing, the same may be omitted from the printed record.

Dated this 15th day of April, 1922.

I. L. ALBERT AND
SANDALL & WRAY,
Attorneys for Plaintiff in Error.
CLARENCE A. DAVIS,
Attorney General,
Attorney for Defendant in Error.

149 [Endorsed:] File No. 28823. Supreme Court U. S., October Term, 1921. Term No. 868. Robert T. Meyer, P. E., vs. State of Nebraska. Stipulation to omit Exhibit A in printing. Filed April 22, 1922.

Endorsed on cover: File No. 28,823. Nebraska Supreme Court. Term No. 325. Robert T. Meyer, plaintiff in error, vs. The State of Nebraska. Filed April 11th, 1922. File No. 28,823.

FILED
FEB 20 1923
WM. R. STANSBU
CLE

Supreme Court of the United States

OCTOBER TERM, 1922

No. 325

ROBERT T. MEYER,
Plaintiff-in-error,

v.

STATE OF NEBRASKA,
Defendant-in-error.

No. 440

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO AND OTHER STATES,
Plaintiffs-in-error,

v.

SAMUEL R. McKELVIE et. al.,
Defendants-in-error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

BRIEF OF AMICI CURIAE

WILLIAM D. GUTHRIE,
BERNARD HERSHKOPF,
Amici Curiae.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

No. 325.

ROBERT T. MEYER,
Plaintiff-in-error,

v.

STATE OF NEBRASKA,
Defendant-in-error.

No. 440.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO AND OTHER STATES,
Plaintiffs-in-error,

v.

SAMUEL R. MCKELVIE *et al.*,
Defendants-in-error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

BRIEF OF AMICI CURIAE.

The undersigned represent various religious and educational institutions in the United States.

In this memorandum it is not our intention to take sides with either party in the above entitled causes. Our sole concern is to bring to the notice of the court certain contentions of the parties and the implications which they may be said to involve. These, as it appears to us, are not necessary to the disposition of the cases at bar; and, if adopted, might hereafter work serious injury to

individual liberty in respect of the education of children and to freedom of religion, and prejudge without hearing or due consideration the controversy in respect of the statute of Oregon, referred to below, in which the undersigned are interested.

Briefly stated, the Nebraska statute, whose constitutionality is called into question in the present cases, forbids the use of a foreign language as a medium of instruction in schools and prohibits the teaching of foreign languages to children before they have passed through the eighth grade (ch. 61, L. 1921). We do not desire either to attack or defend it. It has, however, been urged in the course of this controversy that the police power of a state over the education of minors is virtually unlimited; that the state may make such education its own exclusive monopoly, and that it may prohibit any instruction of children in addition to the studies prescribed by it for all. With these contentions we most earnestly differ.

Were there no more than that, however, we should, nevertheless, not feel warranted in importuning the court in causes not our own. But, unfortunately, the views to which we have alluded and which we deem destructive of individual liberty and freedom of religion, have already found legislative expression in an enactment of the most serious character and far-reaching effect. In November of last year the people of the State of Oregon, acting under the initiative power conferred upon them by the state constitution, adopted a law which attempts to abolish and prohibit, with some trivial exceptions, all instruction of children in private schools and to compel all the children of the state to attend the

public schools, the desires of the children and the wishes of their parents and guardians to the contrary notwithstanding (sec. 5259, Laws of Oregon as amended). The full text of this statute will be found in the appendix hereto. And in Michigan, Oklahoma and California efforts to enact similar laws have been made but have thus far failed of success.

The most casual perusal of the Oregon act will at once disclose that it is, indeed, an extraordinary and revolutionary piece of legislation. It adopts the favorite device of communistic Russia—the destruction of parental authority, the standardization of education despite the diversity of character, aptitude, inclination and physical capacity of children, and the monopolization by the state of the training and teaching of the young. The love and interest of the parent for *his* child, such a statute condemns as an evil; the instinctive preferences and desires of the child itself, such a law represses as if mere manifestations of an incorrigible or baneful disposition.

Anything more un-American and more in conflict with the fundamental principles of our institutions, it would be difficult to imagine. It had always been supposed that "the law does not interfere with the freedom of private instruction" (Freund on the Police Power, sec. 266). The notion of Plato that in a Utopia the state would be the sole repository of parental authority and duty and the children be surrendered to it for upbringing and education (8 Encyc. Brit., 11th ed., tit. "Education", p. 952), was long ago repudiated as impossible and impracticable in a workaday world where men and women lived, loved, had children and sought advance-

ment in the struggle of life (*id.*, p. 960). No educator of any real standing has in modern times seriously advocated a state monopoly of education.* Despite all their other differences of opinion, both John Stuart Mill ("On Liberty", ch. V, pp. 204-6, Ticknor & Fields' ed. 1863) and Herbert Spencer ("Principles of Sociology", vol. I, sec. 321, vol. III, sec. 849, Appleton & Co.'s ed. 1905) were at one in condemning such a course. Heretofore it has never been doubted that the true rule of constitutional law in this respect, as well as the only sound and sensible pedagogic theory, was, in substance, like that announced by the court in *State ex rel. Kelley* v. *Ferguson*, 95 Neb. 63, 73-4, namely:

> "The public school is one of the main bulwarks of our nation, and we would not knowingly do anything to undermine it; but we should be careful to avoid permitting our love for this noble institution to cause us to regard it as 'all in all' and destroy both the God-given and constitutional right of a parent to have some voice in the bringing up and education of his children. . . . The state is more and more taking hold of the private affairs of individuals and requiring that they conduct their business affairs honestly and with due regard for the public good. All this is commendable and must receive the sanction of every good citizen, but, in this age of agitation, such as the world has never known before, we want to be careful lest we carry the doctrine of governmental

*"It is recognized as the duty of the state to insist upon a certain minimum of education for every future citizen. This does not necessitate a monopoly of education on the part of the state, such as was claimed by the Napoleonic despotism under the traditional influence (it would seem) of the old authoritative Gallo-Roman tradition, transformed in its outward manifestation but not in its inward spirit by the French Revolution. Such a monopoly would be plainly repugnant to the spirit of Anglo-Saxon individualism, and it is interesting to note that attempts to reassert it have in recent times been repudiated in republican France by some of the best exponents of modern thought, as an infringement of personal liberty not calculated to justify itself by any corresponding public gain." 8 Encyc. Brit., 11th ed., tit. "Education", p. 960.

paternalism too far, for, after all is said and done, the prime factor in our scheme of government is the American home.'"*

Inseparable from the dogma of Sovietism that the state may take unto itself a monopoly of the education of children, is the doctrine that the state may set up a standard of study for children and forbid *any and all* additional instruction to be given them either in private schools or at home. Such a contention speaks in more familiar terms, but, in the end, it falls within the same category. It is undoubtedly true that the state may prescribe certain minimum standards for the education of minors. It may also prohibit certain species of additional instruction duly found to be inimical to the public welfare. Perhaps, therefore, it may be right for the legislature to declare that a foreign language shall not be taught to a child until after it has passed through the eighth grade: that may conceivably be deemed to be conducive to more orderly progress in education, to a better grasp of English, to making English the child's instinctive and preferential tongue, etc., etc. We need venture no opinion one way or the other upon that issue; the parties will doubtless debate it before the court. But it transcends anything reasonably required for the deci-

*See also *State ex rel. Sheibley* v. *School District*, 31 Neb. 552, 556. Former Vice-President Thomas R. Marshall recently declared (Chicago Daily News, Jan. 14, 1922):

"I have an old-fashioned notion that in a government where freedom of religion is guaranteed to the citizen, as the father of a child, I have a right to train it along the lines of my own religious belief.

"I doubt that any officer, however gifted and high-minded he may be, can have a tenderer regard for my child than I myself possess, that he can more sincerely desire his health, happiness and success.

"Unless I develop into such a brute as to be unfit to take care of my child and thus warrant society in removing him permanently from my custody, I should be let alone to look after his health, care for his wants, guide his education and instil into his mind such religious views as I think will enable him to stand against the temptations of a tempestuous world."

sion of the question whether instruction in foreign languages may be constitutionally postponed until after a child has attained the eighth grade, to argue (1) that the state may take *all* education of children to itself exclusively, or (2) that it may properly forbid *any and all* instruction of the child which is in addition to the prescribed course of study.

The logical outcome of the latter contention is, perhaps, its own best refutation. Such a rule would not only prohibit private instruction of a bright and healthy child in music, the arts and athletics, beyond or in addition to what was prescribed by the state, but it would also make unlawful the private teaching of religion to children. That that would be unconstitutional, we submit, is not open to doubt. Prof. Freund has stated in his work on the Police Power (sec. 266) that—

> "In one respect [at least] education must be constitutionally free, namely, in so far as it is essential to the freedom of religion; for the free exercise of religion implies teaching as well as worship. The state could certainly not prescribe the religious education of children in so far as it would thereby establish a religion, or discriminate in favor of one; nor could it suppress all private schools, since religious denominations would thereby be prevented from inculcating their doctrines in the most effectual way."

The private instruction of children, whether in religious or secular subjects, is, moreover, an ordinary and honest business and the occupation of many worthy citizens. It may be that some abuses in respect thereof have arisen; if so, we have never heard of any widespread evils of that nature. But however that may be, such abuses cannot warrant utter and complete destruc-

tion of the whole business. It should be a matter of no difficulty to formulate regulations which will duly and adequately prevent any specific wrong. If a particular subject of instruction or method of teaching in private schools be deemed objectionable, only it alone need be proscribed. Total prohibition of the business, however, as is attempted in the Oregon statute above referred to, is mere arbitrary, wanton ruthlessness, and not due process of law.

So, in fact, this court has held in the case of *Adams* v. *Tanner*, 244 U. S. 590, 594. There a statute of the State of Washington forbade employment agents to carry on their occupation for profit. The court declared the enactment an unconstitutional interference with liberty and property because it attempted to accomplish by arbitrary destruction of a business what could readily and effectually be accomplished by simple regulation. The court said (244 U. S. at p. 594):

> "Because abuses may, and probably do, grow up in connection with this business, is adequate reason for hedging it about by proper regulations. But this is not enough to justify destruction of one's right to follow a distinctly useful calling in an upright way. Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices; and as to every one of them, no doubt, some can be found quite ready earnestly to maintain that its suppression would be in the public interest. Skillfully directed agitation might also bring about apparent condemnation of any one of them by the public. Happily for all, fundamental guaranties of the Constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked."

If there be any field of human endeavor in which sweeping and repressive prohibitions are almost certain to be unjustifiable, we submit that it is the field of education. "Freedom in the pursuit of art, literature and science is, as matter of history, bound up with the freedom of religion and of speech and press, for it has practically never been opposed for other than religious or political motives" (Freund on the Police Power, sec. 479). The greatest caution is, consequently, necessary in dealing with the subject; and, therefore, we have deemed it our duty briefly to indicate to the court the foregoing considerations which, in our opinion, are not in fact involved in the cases at bar, which need not be decided therein to any extent whatever, and which, we submit, should be wholly left for disposition to the occasion when the Oregon statute referred to above or some similar exercise of legislative power shall duly be laid before the court for adjudication as to its validity.

Washington, D. C., February 19, 1923.

Respectfully submitted,

WILLIAM D. GUTHRIE,

BERNARD HERSHKOPF,

Amici Curiae.

APPENDIX.

Section 5259 Laws of Oregon as amended November 7, 1922.

Be it Enacted by the People of the State of Oregon:

Section 1. That section 5259, Oregon Laws be, and the same is hereby, amended so as to read as follows:

Sec. 5259. *Children Between the Ages of Eight and Sixteen Years.* Any parent, guardian or other person in the state of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the district in which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense. Provided, that in the following cases, children shall not be required to attend public schools.

(a) *Children Physically Unable.* Any child who is abnormal, subnormal or physically unable to attend school.

(b) *Children Who Have Completed the Eighth Grade.* Any child who has completed the eighth grade, in accordance with the provisions of the state course of study.

(c) *Distance from School.* Children between the ages of eight and ten years inclusive, whose place of residence is more than one and one-half miles, and children over ten years of age whose place of residence is

more than three miles, by the nearest traveled road, from a public school; provided, however, that if transportation to and from school is furnished by the school district, this exemption shall not apply.

(d) *Private Instruction.* Any child who is being taught for a like period of time by the parent or private teacher such subjects as are usually taught in the first eight years in the public school, but before such child can be taught by a parent or a private teacher, such parent or private teacher must receive written permission from the county superintendent, and such permission shall not extend longer than the end of the current school year. Such child must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If, after such examination the county superintendent shall determine that such child is not being properly taught, then the county superintendent shall order the parent, guardian, or other person, to send such child to the public school the remainder of the school year.

If any parent, guardian or other person having control or charge or custody of any child between the age of eight and sixteen years, shall fail to comply with any provision of this section, he shall be guilty of a misdemeanor, and shall, on conviction thereof, be subject to a fine of not less than $5, nor more than $100, or to imprisonment in the county jail not less than two nor more than thirty days, or by both such fine and imprisonment in the discretion of the court.

This act shall take effect and be and remain in force from and after the first day of September, 1926.

APR 2 1923
WM. R. STANSBURY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1922.

ROBERT T. MEYER,
Plaintiff-in-error,
vs.
STATE OF NEBRASKA,
Defendant-in-error.
No. 325.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO AND OTHER STATES, ET AL.,
Plaintiffs-in-error,
vs.
SAMUEL R. McKELVIE, ET AL.,
Defendants-in-error.
No. 440.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

Washington, D. C.,
Friday, February 23, 1923.

The above entitled causes came on for oral argument before the full court at 2:40 o'clock p. m.

The Chief Justice. No. 325, Robert T. Meyer vs. State of Nebraska; and No. 440, Nebraska District of Evangelical Lutheran Synod of Missouri, etc., vs. Samuel R. McKelvie, et al.

ORAL ARGUMENT OF ARTHUR F. MULLEN, IN BEHALF OF PLAINTIFFS-IN-ERROR.

Mr. Mullen. May it please the Court: These cases are brought here on writs of error to the Supreme Court of the State of Nebraska, and they involve the validity of laws that are known to us as "language prohibition laws." A somewhat similar question has already been submitted to this court, from Ohio and from Iowa. But the laws under consideration here are somewhat different.

In the Meyer case, Robert T. Meyer vs. State of Nebraska,—that is, the criminal prosecution—Meyer, who was a teacher in a Lutheran parochial school, was convicted of the offense of teaching Biblical stories, in the German language, to children, between the hours of 1 and 1:30 o'clock.

The act under which that action was brought was passed in 1919. Proceedings were started in the courts of Nebraska to enjoin its operation, on the ground that it violated the provisions of both the State and the Federal Constitution. Our supreme court sustained that act, but so interpreted it that it practically emasculated it.

Counsel for the schools and for the people affected by language prohibition were alarmed. They contended that the legislature did not intend to pass an unconstitutional act. The court said: "You have a right to teach languages outside of school hours in the parochial schools; you have a right to teach religion to any child that can not understand the English language, and to teach it in the language the child understands."

In Zion's Parochial School, the school in which Meyer was a teacher, they changed the hours of the school, so as to devote the time between 1 and 1:30 o'clock to religious instruction of children. Between those hours Meyer was engaged in teaching these Bible stories in the German language.

He was arrested, tried and convicted of that offense; the supreme court of Nebraska has affirmed that judgment; and in the other case that is pending here, the court points out, in the minority opinion, that in the Meyer case the court really receded from its former opinion. The state court says that it went too far in the former case. The decision amounts to an ex post facto law as to Meyer, because his act was made an offense after he had performed this act of teaching.

Now, language prohibition arose in our legislature under these circumstances: It came immediately after the war, in the legislature of 1919. Early in that session a bill was introduced, and passed, through the house and was beaten by a vote of only one majority in the senate, that forbade absolutely, the maintenance of primary private schools in that State.

The way it was defeated was this:—the friends of private education introduced a substitute bill, which provided for the regulation of private institutions; provided for the qualifications of teachers; provided for a course of study, the same as the public schools; it provided for all of these different things. That law, which regulated private schools, was passed in 1919, instead of the law that prohibited and abolished them. After it passed, the language prohibition law was passed as a part of the same legislation.

So this law relating to control and the law relating to language prohibition, came out of a legislature that came within one of a majority of adopting the policy of absolutely prohibiting the maintenance of private educational institutions in our State, in the lower grades. That is the atmosphere under which the act was passed.

After the court had sustained the law—or, really, as the opinion of the court shows, (I will not attempt to read it), had emasculated it, the legislature of 1921 convened. It replaced the 1919 act and passed the act involved in this injunction case No. 440, Nebraska District of Evangelical Lutheran Synod, et al. vs. McKelvie, et al.

The Chief Justice. Where is that act set out?

Mr. Mullen. I will refer to it in a minute. This act was passed in 1921.

A proceeding was brought to enjoin it, on the theory that it interfered with property rights. The injunction was allowed; it went to the supreme court and that court sustained the law, with a divided opinion.

The law that is involved in this last case, No. 440, is found on page 2 of the brief in that case. I call attention to the three sections that are involved. The first section states:

> "The English language is hereby declared to be the official language of this State, and all official proceedings, records and publications shall be in such language"—

The Chief Justice. Did you give the page of your brief?

Mr. Mullen. Page 2.

> "and the common school brankes shall be taught in said language in public, private, denominational and parochial schools."

I will say that this section is a copy of the constitutional provision adopted in our State after the passage of the first language law in 1919. So this section is practically a duplicate of our constitution. On that section we have no complaint at all; we are not complaining of that section; it was the law before this act was passed; it is in the constitution of the State, and everybody recognizes the necessity and the wisdom of requiring English instruction to be given in all public and private schools.

But the sections that we do complain about are these; and we invite your Honors' attention to them:

> "Section 2. No person, individually or as a teacher, shall, in any private, denominational, or parochial or public school, teach any subject to any person in any language other than the English language."

There is language prohibition. They then follow with section 3:

> "Section 3. Languages other than the English language may be taught as languages only, after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county or the city superintendent of the city in which the child resides. Provided, that the provisions of this act shall not apply to schools held on Sunday or on some other day of the week which those having the care and custody of the pupils attending same conscientiously observe as the Sabbath, where the object and purpose of such schools is the giving of religious instruction, but shall apply to all other schools and to schools held at all other times. Provided that nothing in this act shall prohibit any person from teaching his own children in his own home any foreign language."

Now, these sections are the sections we are complaining about. These sections just read, are a part of the act under which Mr. Meyer was convicted; they are on the same model. Of course, they do not require, in the Meyer act, that religion be taught on Sunday; but as the thing went along, our legislature concluded that it was a bad thing to teach religion, except on Sunday, in a Sunday school.

Mr. Justice McReynolds. You have two acts which are involved?

Mr. Mullen. Yes. The first act is included in the first two sections of the act that I have just read.

Mr. Justice McReynolds. That is, the Meyer act is included?

Mr. Mullen. Yes; these two sections include it; and this later act repeals the other act. But Meyer was convicted under the other act before it was repealed.

The Chief Justice. The two sections of the two acts are the same, are they?

Mr. Mullen. The sections are not identical. The provisions of the last act are more drastic than those of the other act; but the same constitutional objection is involved in both acts.

The purpose of this act is plain. Counsel for the other side say in their brief that it does not mean what it says. I undertake to say that section 2, if it means anything, means that you cannot teach any subject in any school in Nebraska, the university or anywhere else, except in the English language.

Mr. Justice McReynolds. What does your court say? How does that apply here?

Mr. Mullen. The court did not say anything about section 2.

Mr. Justice McReynolds. Well, the man was convicted of teaching the foreign language, was he not?

Mr. Mullen. Yes.

Mr. Justice VanDevanter. Was he convicted under section 2?

Mr. Mullen. He was convicted under sections 2 and 3 of that act.

Mr. Justice Brandeis. What were the facts under which he was convicted?

Mr. Mullen. The facts are: After the Nebraska Supreme court had construed the first act, it said: "This does not mean that you cannot teach foreign languages in a private school. This act must be construed with reference to other school legislation; and what it does mean is, that you cannot teach foreign languages in a private school in such a way as to interfere with the regular curriculum prescribed by the state to be taught in the school."

And so, to comply with that interpretation of the act, the school said, "We will teach the subjects required by the State; and then, between the hours of 1 and 1:30, we will permit our teachers to teach religion in German."

Mr. Justice Brandeis. That was the Meyer case?

Mr. Mullen. That was the Meyer case.

Mr. Justice Brandeis. Now, what were the facts in the other case?

Mr. Mullen. The other case is simply an injunction, brought to enjoin the operation of the law,—brought against the attorney general of the State, the prosecuting attorney of the county, and the Executive officer of the State, to prevent them from putting the law in force, under the rule that you can enjoin action where property rights are involved.

Mr. Justice Holmes. I did not get that. Meyer was convicted, as I understood you to say, under sections 2 and 3, for having taught religion in German during recess hours; is that right?

Mr. Mullen. That is right; that was under the other act, sections 1 and 2 of the act of 1919.

Mr. Justice Holmes. That is the act that you have printed in your brief in that case?

Mr. Mullen. That is right, your Honor; it is printed on page 2 of the Meyer brief.

Mr. Justice McReynolds. Did the court dismiss the injunction because it would not lie.

Mr. Mullen. The court ordered the injunction dismissed.

Mr. Justice McReynolds. On what ground did they order it dismissed?

Mr. Mullen. On the ground that the statute did not violate any provision of the State constitution, or the Federal constitution. We claim that has been done under both of these acts. We have raised a Federal question in the cases properly, with the intent of bringing them to this court. We brought up the Federal question here because we claim that both of these acts violate the provisions of the Fourteenth Amendment.

Mr. Justice VanDevanter. What kind of a school was Meyer teaching in?

Mr. Mullen. A parochial school, one of the Lutheran schools.

Mr. Justice VanDevanter. Where? A school for juveniles, or what?

Mr. Mullen. Children below the eighth grade; this prohibition applies below the eighth grade in these schools.

Now, in this case, a client of mine, John Seidlik, appeared as an intervenor. We have set forth on pages 4 to 7 of our brief the facts with regard to Seidlik. That brings this case, as we think, squarely within the proposition of depriving this man of his liberty without due process of law; depriving him of his property; imposing an unreasonable restraint upon his liberty; and a discrimination against him and an interference with his religious liberty and freedom of conscience.

Mr. Justice Brandeis. That is in the equity case that he intervened?

Mr. Mullen. That is in the equity case. And as to the facts in that case, there is no dispute about them. There was an effort in the injunction case to prove that there was something wrong with these parochial schools. There is nothing in that. **The law provides that parochial schools shall be the equal of public schools.** It is admitted in the equity case that the children who attend this Polish school, whose fathers and mothers live in the southern part of our city, speak nothing but Polish in the home. They have teachers in that parochial school who are Polish. They teach the children religion and morals, and everything else, in English and Polish, up to the sixth grade. After the sixth grade, English is used exclusively. After the child graduates from that school, it goes to the high school of Omaha without an examination. It is an accredited school of the city. And that school does its work by using the Polish language to teach religion and language and everything else, using it as an agency to enable the children to learn the English language.

As I say, there are no disputed questions of fact, in this suit, either in the criminal case or in the injunction case.

There is, in my opinion, not very much conflict about the law. We are not seeking to have any new principles of law announced with respect to the exercise of the police power.

One proposition is here that has not been squarely passed upon by this court, that is this: **Whether or not the provisions of the Fourteenth Amendment protect a citizen of the United States against legislative action, by a**

state that denies him religious liberty. That question seems to be squarely here. We have argued it at length in the briefs.

First, we claim the act deprives us of our liberty of conscience; it violates the equality provision of the constitution; it denies us the equal protection of the laws; it deprives us of our liberty and property, without due process of law, and abridges our privileges and immunities as citizens of the United States. Secondly, that religious freedom, freedom of conscience and freedom of speech come within "the privileges and immunities" referred to in the Fourteenth Amendment.

So we think we have raised in this case and presented squarely, (and we have cited authorities on it)—the proposition that the religious liberty of those people is interfered with. It is admitted in the brief of the State that the act does this; it is said the purpose of the act is to stop religious instruction in any school in the State until the child can understand the English language.

Take the case of Seidlik: The proof shows that the mother cannot speak a word of English. Seidlik works in the stockyards. He put $500 into the St. Francis Parochial School; and he pays 50 cents a month to that school for each child attending it,—he and other Polish people in that part of the city. The duty of that mother is to teach morality and religion to her child; and she has a right to employ a private school to help her in doing that.

Mr. Justice Holmes. She is not forbidden to do it at home, is she?

Mr. Mullen. No, that is true. They undertake in those acts, if your Honor please, to prescribe the place where the thing shall be done, and to make it a crime to do it elsewhere. This is an arbitrary classification. That mother is denied the right given to the mother who speaks the English language in her home: The mother who speaks English in her home can teach the child in the language of the home; and she has a right to have a private school in which that education can be supplemented. But the Polish mother, or the Bohemian mother, or the German mother, is denied that privilege under this act; because she is not permitted to have a teacher give instruction to her child in any language but English; and until that child learns English, the child cannot receive religious instruction in any private school in our State.

So, we say that this act interferes with our freedom of conscience. It denies us religious freedom. It denies us rights given to others similarly situated. It denies us equal protection of the laws and takes from us our constitutional privileges and immunities.

It is an arbitrary classification. Think of the classification! It is difficult to conceive of a more arbitrary classification than that proposed here.

No child shall study any foreign language below the eighth grade, in a parochial or private school, or a public school—at no school can they study it; they can study it at home.

If foreign languages are bad and dangerous to the State, they should stop the study of them in every place. They do not undertake to do that; they undertake to prescribe and prohibit and prevent the study of languages in private schools.

We have heard in the past of instances—

Mr. Justice McReynolds (interposing). How did they abolish private schools? Did the State prohibit private schools?

Mr. Mullen. I say, your Honor, that they could no more abolish private schools than they could—

Mr. Justice McReynolds (interposing). I just wanted to see what you claim: What about the power of the State to require the children to attend the public schools?

Mr. Mullen. That is what I will come to in a moment.

Mr. Justice McReynolds. You will admit that, will you not?

Mr. Mullen. I do not admit that.

Mr. Justice McReynolds. You do not admit that?

Mr. Mullen. **I do not admit that. I deny that a State can, by a majority of the legislature, require me to send my child to the public schools.**

I submit this, however: I agree with the proposition that, under the police power, the State has authority to regulate private schools, and to require private schools to have relatively the same standard as public schools. I distinguish between the right to abolish an institution and the right to regulate it.

Let me go a little further: My theory of the State's control of education under the police power is this:**That the State has a right to prescribe a minimum of education for the children within the United States, or within the State. It has the right, clearly, within the police power to require the children to have sufficient education to properly discharge their duties as citizens. But when that minimum is reached, the State has no police power above that. It is entirely a matter of option with the student, the teacher and the parent what the school shall teach the child above that. Although the State can require a minimum of education, I deny that the State can require everybody to attend the State University. And I do not believe that the State has power to take complete control of education, and give it a complete monopoly of education. That is not in accordance with the history of our people, nor with the history of the human race. The State has a right to prescribe minimums, but when we meet those minimums, its police power stops.**

Take for example, the question suggested by Mr. Justice McReynolds: **If the State has, as suggested by him, the power to require all children to attend the public schools, that means that private schools must close. If it has a right to pass that kind of a compulsory school law, it can close up the private institutions, because there is no need for them, then everybody must attend the public schools.**

I concede the right of the State to regulate instruction in public schools **—not absolutely, but relatively.** If it has the power to require everybody to attend public schools, it would have the right to close up the private schools. **I claim that the State has no more power to do that than it would have to prescribe a bill of fare as to what people should eat. The State has the right to regulate restaurants, and to control and inspect places where food is sold; but that does not give the State power to regulate when we shall eat, or what we shall eat.**

Education has always been a private matter. When we look back, we find that we have got to deal with this question, keeping in mind recognized historical facts that are within the knowledge of this Court.

When was the first private school started? Nobody knows. The entire education of the human race has been private, through all the ages, and in practically every civilized country in the world.

When was the first compulsory school law passed? Within the lifetime of people in this court room. The first compulsory school law in any State of the Union was passed in Massachusetts in 1852—about a generation back. The first public school that we ever heard of is less than 75 years old. The public school system was largely the work of Horace Mann, back in 1830 to 1840; prior to that time there was not such a thing as a public school, a so-called "Common School" in any part of this country.

The first free school in the City of New York was founded by the first chief justice of this great Court, John Jay, who, with Alexander Hamilton, founded a free school for negroes in 1799. In 1801 the first white child went to a public school in New York; Massachusetts had free public schools at about the same time. I read yesterday that the first free school in Virginia was founded by George Washington in 1765.

These were not common schools; these were free schools, for anybody who wanted to attend them. But the common school system was established about 1840.

The compulsory system, requiring children to attend some school, public or private, was first enacted in 1852.

And now it is seriously argued that a legislative majority can change the entire history of the human race, and by its mere fiat take my children and require me to send them to a public school, and have the course of study absolutely regulated by the State.

I deny that any such legislative power exists in a constitutional government.

That question is here at the very base of this case. It is a blow at education; it is striking down the principle that a parent has control over the education of his child;**I deny the power of a legislative majority to take the child from the parent and prescribe the mental bill of fare which that child shall follow in its education.**

That is what is involved in this suit; and in my judgment, it is one of **the most important questions that has been presented for a generation; because it deals with the principle of the soviet. Here is an act requiring the child to be taught religion after dark or on Sunday.** In Russia, they abolished it altogether; they said, "You cannot teach religion on Sunday, even." There are 147 different languages in Russia; and you cannot teach a child religion in any one of these languages over there. They do not need any religion to run the kind of government they have had for the last few years. And that is the same question that is involved in the right of these plaintiffs to run these private institutions.

Now, why was this law passed? It does not come within the rule stated in Noble State Bank vs. Haskell, as being necessary to the public welfare. It does not appear that this legislation was well considered and thought out. It comes rather within the rule suggested by the Chief Justice in Truax v. Corrigan, where it was said that the Constitution was intended to prevent experimentation with the fundamental, basic rights of our citizens. **Why, a parent has some rights over his child. I would like to know who has the most interest in these children in St. Francis School,**

this intervenor who is rearing his children in his own way, or the majority of the legislature of Nebraska, or a teacher in some public school?

The liberty that we complain of being deprived of is not an incidental matter. This act says on its face that its intention and purpose is to deprive us of these rights, not incidentally, but directly. That is not incidental; that is the purpose. The aim and the object of this act is to prevent these children in these private schools from receiving instruction in religion or any other subject in any language except English.

In my State, though it is a Western State, one-half of the people living in that great commonwealth, are either in the first or the second generation from Continental Europe. They would have you believe that nobody is interested in this suit but Germans; the whole thing is, they are trying the Huns again. The Poles are interested in it; and the Norwegians and the Swedes, and all men from continental Europe are interested in this matter of private education.

It is true that the Lutheran and the Catholic churches are most interested in it, because it strikes at their religious schools, and deprives them of control over those schools, and cripples them and makes less valuable their property. That is what is back of the act and in the act.

If your Honors please, I am not going to take the time of this Court to read the adjudicated cases. They are here; I have cited them in the brief.

I just want to call attention to a few of the things involved. For example, take section 2. Leave out the question of the children. As a practicing lawyer I have been examining statutes and court decisions for twenty-five years and I say that I never have seen an act that is so arbitrary and capricious, and so really distasteful as this one. Here is section 2, which shuts up all the avenues of learning to our people, except what they can get in the English language. I challenged them in the local courts, and I challenge them here, to deny this: The original Code Napoleon was written in French. I submit that it is a violation of section 2, if a student in our State University studies the Code Napoleon in French. Why do I say that? Section 2 says:

> "No person, individually or as a teacher, shall, in any private, denominational, or parochial or public school, teach any subject to any person in any language other than the English language."

Now, if the teacher cannot teach it, the pupil can not study it.

You can not study science; you can not study works on music. They close up the novels of Balzac and Cervantes; you can not study the works of Schiller; they close up the works of every man who has ever written anything in science, literature or theology in continental Europe. You can not study the works of St. Thomas, or St. Augustine, or Martin Luther; you can not study the works of Kant or Voltaire in the original language in my State, in any school. They absolutely close all of these. Well, that is language prohibition brought to its final and last conclusion.

With reference to the child, the child can study languages, as languages only after reaching the eighth grade.

The Chief Justice. How old is he then?

Mr. Mullen. I imagine he is between 11 and 12, your Honor.

The Chief Justice. Is he not older than that?

Mr. Mullen. Probably 14.

The Chief Justice. Is the eighth grade just before going into high school?

Mr. Mullen. Yes, just before going into the high school.

The Chief Justice. Is that the junior high school?

Mr. Mullen. No; that is the regular high school, as I understand it, in my State.

The Chief Justice. Yes, that is about right.

Mr. Mullen. Then they undertake to say to the child as a reason why they do not want the child to do that. Our court said in the Meyer case, for example—(because hard cases make bad law)—it sustained the law on this theory—answering the question of the Chief Justice: **it said it was detrimental to the health of the children to have them study foreign languages outside of school hours.** The child could study anything else, and it would not injure its health; but if it should study the German or Norwegian language, that would injure its health; it could study painting, or music, or anything else outside of the regular curriculum; but to study foreign languages would have a bad effect on its health. That was said in the opioion.

The Chief Justice. Before you get through I wish you would take this up—perhaps you have reached the point now. You know when we come to consider the question of the constitutionality of a law, we have, if we hold it invalid, to be able to put our fingers on the particular provision of the Constitution that is violated.

Mr. Mullen. That is right.

The Chief Justice. Will you point out before you are through the particular provision which is violated?

Mr. Mullen. I will point out the first one; I will start with that, because I have touched upon it: **It interferes with the freedom of religion and with the freedom of conscience; and that violates the Fourteenth Amendment, in this, that it denies us the equal protection of the laws, and is a denial of "the immunities and privileges" of the citizen as against interference by the State. That is the first one.**

Mr. Justice McReynolds. Well, wait a minute. Is it not a matter of high importance to the people of the State that all its citizens speak English?

Mr. Mullen. That is right; I agree with that.

Mr. Justice McReynolds. And has not the State the right to adopt any reasonable means it sees fit to see that all its people speak English?

Mr. Mullen. That is right; and they have done that in this act.

Mr. Justice McReynolds. Yes; but you say they cannot control that. How far can the legislature go in controlling that? How far can the legislature go in controlling that?

Mr. Mullen. Here is the situation: If you look into this language prohibition, as quoted in the brief of the State, you will find, that practically all of this language legislation followed immediately after the war. There were 25 or 30 bills passed in different States in 1918 and 1919. Now, most of those States provided for language regulation and provided for the study of English. In two or three States, including my State, they provided for language prohibition.

Now, the suggestion that you make is covered by this statement: We went on in our State under our constitution, as in other states, for 60 years, and never required anybody to study English.

Mr. Justice McReynolds. But the State constitution does not help us in this matter.

Mr. Mullen. But the point I make is, you asked whether or not the State could do it. The State did require that the common school branches should be taught in the English language. That is the first legislation that we ever had on the subject in our state—in 1921. My answer to you is this: **that requiring the child to study English, and to receive instruction in English in the common schools of the State, is a very different proposition from prohibiting the study of foreign languages in those schools.**

I concede the right of the State to require the study of English, under the police power. But I do not concede for a moment that the legislature has the power, when we comply with the curriculum of study prescribed by the State, to deny us the right to teach a foreign language as an optional subject, or to teach a subject in a foreign language, if the child does not understand English, or to teach a child religion in a foreign language.

The difference between the two propositions is this: It is the difference that is announced in Adams v. Tanner, where the act undertook to prohibit an employment agency; this court said, **"You cannot prohibit it; but you can regulate it."**

I submit that this is not regulation of foreign languages; it is prohibition of foreign languages. It prohibits the use of a foreign language to give instruction to anybody, at any place, at any time; and it makes such an arbitrary classification with refence to the child and with reference to the citizen, that it deprives us of our liberty and property without due process of law.

No person can study a foreign language in my State, as a language, unless he has a certificate from a high school. **I doubt whether or not any member of this bar could qualify under that, in our State; he has not that certificate, and cannot get it.** So nobody can study a foreign language, as a language, even though he gets through, until he has this certificate from the county superintendent or the city superintendent.

The theory of this law, and the only reason put forth for it, is that this law forbids the children from studying a foreign language when they are most impressionable; in other words, it is more difficult for a child to learn a language after it gets into high school than it is in the lower grades; and its purpose is to discourage the study of foreign languages; that is the only theory upon which it was enacted.

If your Honors please, the theory of requiring a child to study a language at a period of its life when it is more difficult for it to learn is the same theory that was invoked by the Pharaos, when they required their subjects "to make bricks without straw", there is no doubt about it; what they were trying to do is to prevent the study of foreign languages, and the use of foreign languages; **I do not question the section requiring them to study English; but we do question this law that prohibits us from using a foreign language to teach religion and other subjects that are necessary; and I do say that they have a right to teach these foreign languages and other branches, in addition to the curriculum required by the public schools.**

The only objection they can make to the teaching of foreign languages in a private or parochial school is this: I can conceive that, if it was done in such a way as to interfere with the regular course of study, there might be reasonable objection to it. **But when we get above the minimum requirements in our State, qualifications of teachers, equipment, and everything else, it is none of the state's business what we teach the child, so long as we do not teach it sedition, or something of that kind. We have a right to teach any useful or harmless study—gymnastics, dancing, or anything else; and languages as well as anything else; because there is nothing inherently bad about learning a foreign language.**

The Chief Justice. Do you argue that the Fourteenth Amendment, in its provision, "No state shall deprive any person of life, liberty or property, without due process of law," includes in that "liberty" the free exercise of religion?

Mr. Mullen. I do, your Honor—frankly.

The Chief Justice. You do incorporate that into that provision?

Mr. Mullen. **I do, and I contend earnestly for that; and I have cited those cases, your Honor, in my brief, in which this Court interpreted the words "privileges and immunities", as used in the other part of the Constitution, before the Fourteenth Amendment was adopted; that is in the original Constitution. Now, I contend that these "privileges and immunities" in the Fourteenth Amendment mean the same as the "privileges and immunities" in the original Constitution; and that, surely, religious liberty is a privilege and immunity guaranteed by our Constitution.**

The Chief Justice. And free speech also.

Mr. Mullen. **And free speech also; and the right to study, and the right to use the human intellect as a man sees fit. I deny that "liberty" means merely the right to be out of jail. I think mental liberty is more important than the right to be physically free.**

And that is what this act does: **It reaches in and deprives a citizen of this liberty, of controlling his own family.**

Now, if you will read the petition and testimony of this intervener—it is quoted in the brief. **This Polish man has the same rights over his family as the most cultured man in my State; because we do not measure rights by what a man knows or what he has in this country—and this Court does not do that. There is not any doubt at all that this act interferes with religious instruction; in fact, it is admitted.**

In the Iowa case, the act provides that it shall only apply to secular instruction; that act says it shall not interfere with religious instruction. We tried to insert in the Nebraska act the word "secular", and they would not put it in there.

Mr. Justice Sutherland. Does this interfere with religious instruction, except in schools?

Mr. Mullen. Certainly—well, I do not see how you would teach it; I do not see how you could hire a tutor; I do not see how you could teach any religion, unless it was taught by the father or the mother. You could teach languages as languages only, above a certain grade. Now, the act says, "No person, individually or as a teacher." Now, I do not see how you could do it, except outside of a school; it says you cannot do it in a school, however.

Mr. Justice Sutherland. Would you claim that a person has a right to teach any particular religion in a school?

Mr. Mullen. I think they have that right in a private school. I think that is clearly within the right of religious liberty.

Mr. Justice Sutherland. I am not speaking now of moral or political principles, but I am speaking of teaching religion.

Mr. Mullen. I concede that, if there was anything wrong about the religion, like polygamy, you could not teach it; but you could teach Mohammedanism or Judaism, or any other religion or philosophy.

I want for a moment to take up this question: This Court must regard this case, not only on the records presented here, but on the facts that are known to it.

This law was an aftermath of the war; there is no doubt about that; I just want to read from Mencken's "The American Language," something relating to war resentment. This language legislation is war resentment; that was the primary purpose for which it was enacted; and that is one thing that the Court must consider. I read from Mencken's "The American Language"; on page 45 he says:

> "William Gifford, the first editor of the 'Quarterly Review', is authority for the tale that a plan was set on foot during the Revolution for the abandonment of English as the national language of America, and the substitution of Hebrew in its place. The passion for complete political independence of England bred a general hostility to all English authority, whatever its character; and that hostility, in the direction of present concern to us, culminated in the revolutionary attitude of Noah Webster's "Dissertations on English Language", printed in 1789:
>
> 'Let us', he said, 'seize the present moment and establish a national language, as well as a national government'."

These people came to this country. They brought with them all their attributes; they brought with them their language and their religion; they brought with them their racial assets and liabilities. They came here and became a part of the people. They were here in the beginning; the DeKalbs and the Pulaskis and the Kosciuszkos, and others. These men who helped to fight the Revolution were a part of the government; they helped to establish it.

I deny the proposition that we are an Anglo-Saxon blend. We are rather a cosmopolitan people, and the great people that came here from Continental Europe have rights to their languages, just the same as the men who came from the islands to the west of Europe; there is no question about that. These men from Continental Europe had a part in the constitutional convention of this government, and helped to create this government.

Did anybody ever think, in the days of Benjamin Franklin and Tom Paine that these things would be seriously debated, that it would be claimed that a man could have his liberty interfered with by depriving him of his control over his children and the right to direct and control their education? Nobody would even debate that in those days.

These men brought with them these languages; they are a part of the attributes of those people. Language prohibition in other parts of the world has been justified, for the purpose of holding an alien people, or a conquered people in subjection. **But that base reason does not exist here.**

Mr. Justice McReynolds. Well, what control would the State have in this language matter—none, do you think? Do you think that a man could teach whatever language he pleased?

Mr. Mullen. **Yes, in a private school.**

Mr. Justice McReynolds. Yes; but how far can the State go? Suppose the State concludes, in the best interest of the people of the State, not to have Polish or German spoken: Could it stop it?

Mr. Mullen. **I seriously doubt it.**

Mr. Justice McReynolds. Well, why?

Mr. Mullen. **Because the Constitution, if it means anything, means liberty of a different sort than that. If we ever reach a point in this country where a majority of the legislature can say that you cannot speak or study German in a private school, for the same reason you can get another legislature to pass a law saying that you shall not teach anything that is in favor of the private ownership of property.** Because the doctrine is the same: If the legislature can say that you cannot teach the right to have private property in a school, it can say that you cannot have a certain bill of fare; because, at some place, this court must draw the line.

Mr. Justice McReynolds. I cannot follow any such reasoning as that; but the State has some control, has it not?

Mr. Mullen. Yes, sir.

Mr. Justice McReynolds. Where is the line drawn?

Mr. Mullen. They have stopped it in the public schools; they can do that. They have this line: That if the giving of private instruction in a foreign language would interfere with a course of study prescribed by the State, I think it would be within its rights in preventing such interference; but as long as the private school complies with the provisions of the school law, in the matter of courses of study, the state has no right to say what a person shall study as an optional subject, or how he shall study it.

The Chief Justice. I think your line of distinction is this: Here are two conflicting principles—

Mr. Mullen. (Interposing) That is right.

Mr. Chief Justice. Here are two conflicting principles—I hope they are not conflicting; but at any rate, they seem to be currents flowing in different directions—here is the regulatory power of the State, to require proper education among its people, to protect itself, and to protect all the people in the education of all.

Mr. Mullen. Yes.

The Chief Justice. And then, on the other hand, is this freedom, this liberty. Now, you have got to draw the line for us, if you are going to help us.

Mr. Mullen. I am trying to help to draw the line.

Mr. Chief Justice. Now, in the first place, you say, as I understand you, that in the public schools they can lay down any curriculum that they choose?

Mr. Mullen. That is right. I concede that.

Mr. Chief Justice. And they can exclude German, and exclude any language that they choose?

Mr. Mullen. That is right.

The Chief Justice. When you come to private schools, you admit that, in their curriculum, they must have this amount of education in the English language, and in any other branchof learning prescribed.

Mr. Mullen. That is right.

The Chief Justice. In order that they shall come up to the standard that the State thinks is necessary to the safety of the community?

Mr. Mullen. That is right.

Mr. Chief Justice. Now, you also contend, if I understand correctly, that when the State goes that far, it has gone as far as it has a right to go, so far as private schools are concerned, unless that which it is proposed to teach in private schools will work some evil to the public?

Mr. Mullen. That is right—interfere with the public instruction.

The Chief Justice (continuing). Which the courts will not find to be a mere pretense of evil, but will find to have a real basis.

Mr. Mullen. That is my position exactly; you have stated it correctly.

I just want to say in closing: These important questions have been discussed here very quickly. These people came here with their languages, they are a part of our population. **The right of a man to communicate with his family, and the right of a man to give religious instruction to his children; and the right to be free in his home; and the right to maintain private educational institutions and in these matters to be left alone,—surely, these rights are "privileges and immunities" protected by the Constitution of the United States. These rights should not be fixed or limited by any narrow, shriveled and devitalized definitions of constitutional liberty.**

Office Supreme Court, U. S.
FILED
DEC 13 1922
WM. R. STANSBURY
CLERK

Number 308

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1922.

ROBERT T. MEYER, PLAINTIFF IN ERROR,

v.

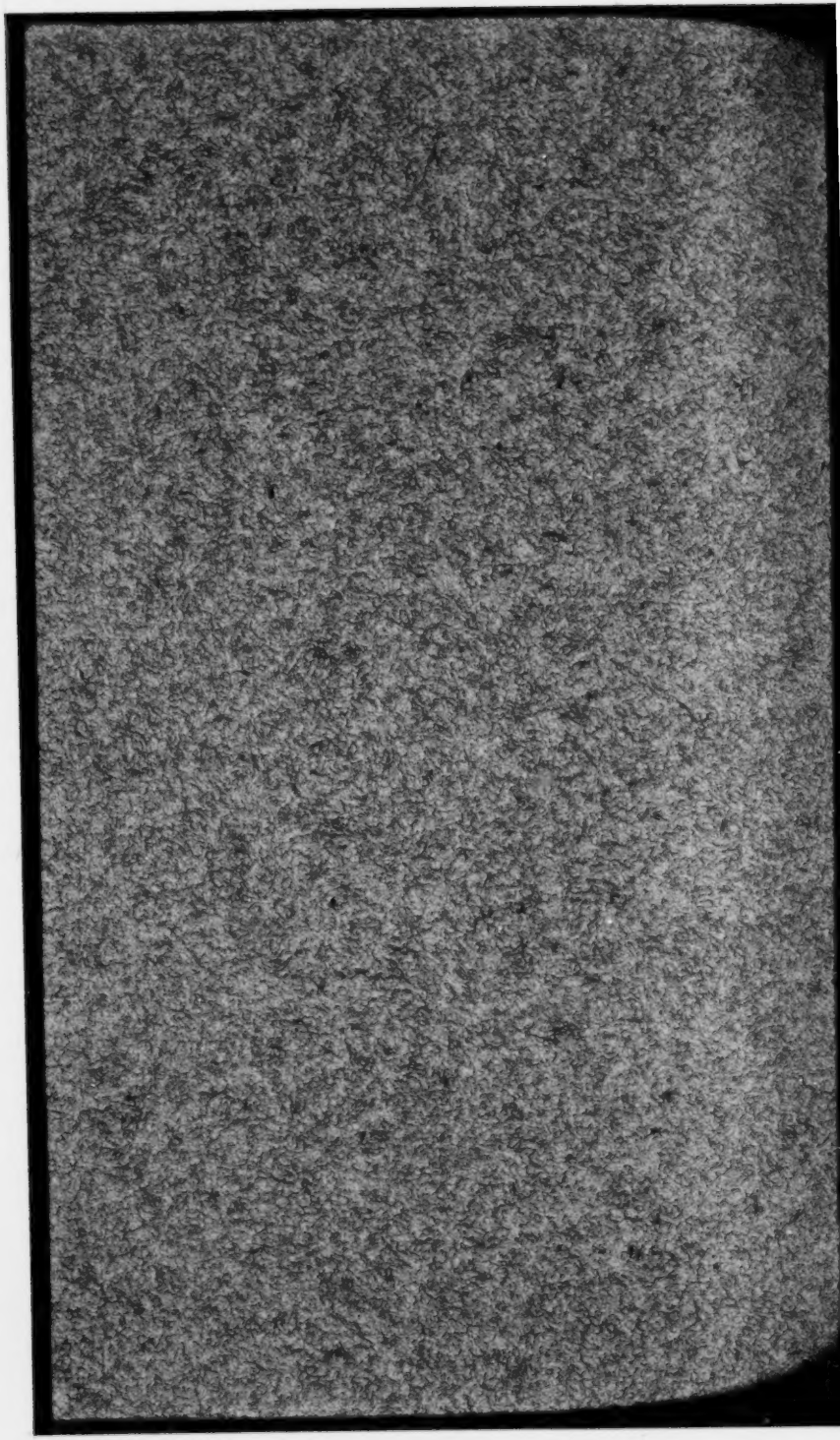
THE STATE OF NEBRASKA, DEFENDANT IN ERROR.

MOTION OF THE STATE OF NEBRASKA, DEFENDANT IN ERROR, TO ADVANCE CASE FOR ARGUMENT UNDER SUBDIVISION 4, RULE 31, SUPREME COURT OF THE UNITED STATES.

CLARENCE A. DAVIS, Attorney General of Nebraska,
Attorney for State of Nebraska, Defendant in Error, Lincoln, Nebraska, for the Motion.

I. L. ALBERT, Columbus, Nebraska,
Attorney for Plaintiff in Error.

WESTERN COMPANY, Law Briefs, Lincoln, Neb.



Number 325.

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1922.

ROBERT T. MEYER, PLAINTIFF IN ERROR,

V.

THE STATE OF NEBRASKA, DEFENDANT IN ERROR.

MOTION.

The above named defendant in error, by its attorney, Clarence A. Davis, Attorney General of the State of Nebraska, respectfully moves under Subdivision 3 of Rule 26 of the Supreme Court of the United States, to advance the above entitled case for argument as a criminal case on writ of error to revise a judgment of the Supreme Court of Nebraska, and to permit counsel to file briefs and present their arguments as to the constitutionality of the Nebraska foreign language law before this court finally determines the matter in the Iowa and Ohio cases already argued and now pending.

CLARENCE A. DAVIS,
Attorney General of the State of Nebraska,
Attorney for Defendants in Error.

Lincoln, Nebraska,
December 6, 1922.

Number 325.

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1922.

ROBERT T. MEYER, PLAINTIFF IN ERROR,

v.

THE STATE OF NEBRASKA, DEFENDANT IN ERROR.

NOTICE OF SUBMISSION OF MOTION TO ADVANCE CASE FOR ARGUMENT.

You will please take notice that on the printed record herein, the annexed statement of facts verified December 5, 1922, by Mason Wheeler as Assistant Attorney General of the State of Nebraska, there will be submitted to the Supreme Court of the United States without oral argument, on a stated term thereof, on Monday, December 18, 1922, at the Capitol, in the city of Washington, in the District of Columbia, a motion of which the foregoing is a copy.

CLARENCE A. DAVIS,
Attorney General of the State of Nebraska,
Attorney for Defendants in Error.

Lincoln, Nebraska,
December 6, 1922.

To. I. L. Albert, Esq.,
Columbus, Nebraska,
Attorney for Plaintiff in Error.

Service of the above motion with notice thereof together with verified statement of facts is hereby acknowledged this 7th day of December, 1922.

.....
Attorney for Plaintiff in Error.

December 7, 1922.

Number 325.

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1922.

ROBERT T. MEYER, PLAINTIFF IN ERROR,

v.

THE STATE OF NEBRASKA, DEFENDANT IN ERROR.

VERIFIED STATEMENT OF FACTS.

United States of America,
State of Nebraska,
County of Lancaster. } ss.

Mason Wheeler, first being duly sworn, deposes and says that he is one of the Assistant Attorneys General of the State of Nebraska, and that he has charge of this case in the office of said Attorney General, and that:

This case is a proceeding by writ of error from a judgment of the Supreme Court of the State of Nebraska sustaining the criminal conviction of the plaintiff in error for violation of the foreign language statute of the State of Nebraska, known as Chapter 249 of the Laws of Nebraska for 1919.

The statute prohibits instruction in foreign languages in schools to children who have not passed the eighth grade. The constitutionality of the statute is attacked in this court on the grounds that it violates the Fourteenth Amendment of the Constitution of the United States; deprives plaintiff in error of his liberty, abridges his privileges and immunities as a

citizen of the United States, and is not a legitimate exercise of the police power. The plaintiff in error was convicted and fined in the District Court of Nebraska in a criminal proceeding upon information for unlawfully teaching reading in a foreign language to a child in the State of Nebraska who had not passed the eighth grade examination. His conviction was sustained in the Supreme Court of the State of Nebraska and the case was thereupon taken to the Supreme Court of the United States by writ of error.

The matter involved is the constitutionality under the United State's Constitution of the foreign language statute of the State of Nebraska, and is substantially the same issue as is pending before this court in another case from Nebraska entitled *Nebraska District of Evangelical Lutheran Synod of Missouri et al.* v. *McKelvie, et al.*, No. 440, October Term, 1922. A motion has been made and is pending before this court to consolidate these cases for purposes of argument.

Appeals involving substantially the same question, the constitutionality of similar foreign language statutes, have already been argued before this court; the constitutionality of the Ohio statute having been submitted to this court on October 12, 1922, in the case entitled *Pohl* v. *State of Ohio,* No. 562, and the constitutionality of the Iowa statute argued before this court on November 29, 1922, in the case entitled *Bartels* v. *Iowa,* No. 445.

This case is of considerable public interest to and in the State of Nebraska; counsel are anxious to submit their briefs and to be heard in argument before this court before the court finally determines the matters involved in the Ohio and Iowa cases. The record and briefs have been printed and filed and the case is now ready for argument.

As this case comes to this court by writ of error from a conviction in a criminal case, it is entitled to advancement under Subdivision 3 of Rule 26 of the Supreme Court of the United States, which rule reads as follows:

> "Criminal cases may be advanced by leave of court on motion of either party."

and is also entitled to preference under Section 1230, United States Compiled Statutes, 1918; Section 253, Judicial Code Revised Statutes; Paragraph 710, 36 Statutes at Large 1160, March 3, 1911, Chapter 231, which reads as follows:

> "Cases on writ of error to revise judgment of state court in any criminal case shall have precedence on the docket of the Supreme Court of all cases to which the Government of the United States is not a party excepting only such cases as the court in its discretion may decide to be of public importance."

Defendant in error prays that this cause, consolidated for purposes of argument with *Nebraska District of Evangelical Luthern Synod* v. *McKelvie*, No. 440, October Term, 1922, be advanced for argument; that it be heard before this court finally determines *Pohl* v. *Ohio*, No. 562, and *Bartels* v. *Iowa*, No. 445, and that it be set down for argument as soon as possible and at any time except during the week of January 8 to 13, 1923, during which week counsel for plaintiff in error in *Nebraska District of Evangelical Lutheran Synod* v. *McKelvie*, has a case on the calendar of the Circuit Court of Appeals.

MASON WHEELER,

Subscribed and sworn to before me this 6th day of December, 1922.

FRIEDA C. BAYERLEIN,
Notary Public.

(Notarial Seal)

Number 325.

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1922.

ROBERT T. MEYER, PLAINTIFF IN ERROR,

v.

THE STATE OF NEBRASKA, DEFENDANT IN ERROR.

ORDER.

Upon reading and filing the annexed notice, motion of defendant in error, statement of facts verified December 6, 1922, and the printed record, it is hereby ordered that the case entitled *Robert T. Meyer, plaintiff in error* v. *The State of Nebraska, defendant in error,* No. 325, October Term, 1922, be advanced for argument, and be and is hereby placed on the calendar of this court for argument on the.....day of..... ....., 192.., for the reason that the above entitled case arises on writ of error to reverse the judgment of the Supreme Court of Nebraska in a criminal case.

Washington, D. C., December ....., 1922.

.....

Chief Justice of the Supreme Court of the United States.

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Supreme Court of the United States

October Term, 1922

No. 325

ROBERT T. MEYER,
Plaintiff in Error,

vs.

THE STATE OF NEBRASKA,
Defendant in Error.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR

STATEMENT OF THE CASE

This case involves the constitutionality of Chapter 249 of the Laws of Nebraska for 1919 (page 1019), which, omitting the title and emergency clause, is as follows:

"1. No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language.

"2. Languages, other than the English language, may be taught as languages only after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county in which the child resides.

"3. Any person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor and, upon

conviction, shall be subject to a fine of not less than Twenty-five ($25) Dollars, nor more than One Hundred ($100) Dollars or be confined in the county jail for any period not exceeding thirty days for each offense."

An information charging the plaintiff with a violation of that Act was filed in the District Court of Hamilton County, Nebraska, on the 3rd day of September, 1920, which, omitting the formal parts, is as follows:

"That Robert T. Meyer, late of said county, on or about the 25th day of May, A.D. 1920, in the County aforesaid, then and there being, and then and there being a teacher in Zion's Parochial School, a parochial school located and conducted in said County, did then and there unlawfully teach to Raymond Parpart, the subject of reading in a language other than the English language, to-wit, the German language, the said Raymond Parpart being then and there a child of the age of ten years, who had not at said time attained and successfully passed the eighth (8th) grade as evidenced by certificate of graduation issued by the County Superintendent of Hamilton County, Nebraska, the County in which the said Raymond Parpart then and there resided." (page 3, Printed Record.)

The sufficiency of the information to charge an offense was challenged by demurrer *ore tenus,* which, under the practise in the State of Nebraska, was sufficient to raise every question going to the sufficiency of the information to sustain a conviction. The demurrer was overruled. (page 17, Printed Record.)

The testimony begins at page 21 of the printed record. It conclusively establishes that the plaintiff in error, at the time stated in the information, was a teacher in a parochial school maintained by a branch of the Lutheran Church, and that pursuant to the direction of the governing body of the school, he taught reading in a language other than English

during the last half hour of the noon recess, which was from 12 M. to 1:30 P.M., to such of his pupils as desired to receive such instructions, and, that one of the pupils thus taught had not passed the eighth grade.

The jury returned a verdict of guilty (page 10, Printed Record), and from a judgment of conviction rendered thereon (page 12, Printed Record), the plaintiff in error prosecuted an appeal to the Supreme Court of Nebraska.

Among the questions presented and decided on that appeal was, whether the statute was a valid exercise of the police power of the state, and not in contravention of the Fourteenth Amendment to the Constitution of the United States, operating to deprive the plaintiff in error of his liberty and property without due process of law, as an unreasonable restraint upon his liberty and a denial of the equal protection of the law.

Federal Question Decided

The judgment of the lower court was affirmed (page 48, Printed Record), and the constitutionality of the statute sustained by a divided court, in an opinion beginning at page 49 of the printed record. The first headnote to the opinion is as follows:

"The Statute (Laws 1919, ch. 249) prohibiting the teaching of foreign languages in schools of children before they have passed the eighth grade, held, a reasonable exercise of the police power of the state."

In the body of the opinion will be found the following:

"The enactment of such a statute comes reasonably within the police power of the state. * * * It is suggested that the law is an unwarranted restriction, in that it applies

to all citizens of the state and arbitrarily interferes with the rights of citizens who are not of foreign ancestry, and prevents them, without reason, from having their children taught foreign languages in school. * * *

"Whether or not the policy of this law is correct is not for the court to say. That was a question exclusively for the legislature. The question for the court is whether the law is reasonable, and not capricious and arbitrary; whether it was enacted in the interests of the welfare of the state; whether it is a lawful exercise of the police power; in general, whether it is constitutional. If the policy of the law is wrong, the people of the state, through the legislature, or upon their own initiative, can change it." (pages 52 and 53, Printed Record.)

In the dissenting opinion by Mr. Justice Letton, concurred in by Chief Justice Morrissey (page 55, Printed Record), is the following:

"The matter is of grave importance, since it involves the question as to the extent that a legislature may infringe upon the fundamental rights and liberty of a citizen protected by the state and federal constitutions."

A motion for rehearing was filed, which is set out in the printed record, beginning at page 57. The seventh, eighth, ninth and twelfth grounds whereof are as follows:

"7. The court erred in deciding and holding that such statute, as construed by the court in the majority opinion filed herein, does not operate to deprive the plaintiff in error and other persons of their liberty or property without due process of law, nor as an unreasonable restraint upon the liberty of the plaintiff in error and other persons in contravention of the Fourteenth Amendment to the Constitution of the United States or of Section 3, Article I of the Constitution of the State of Nebraska.

"8. The judgment of this court, affirming the judgment of conviction of the plaintiff in error, contravenes the Four-

teenth Amendment to the Constitution of the United States in that it operates to deprive the plaintiff of his liberty and property without due process of law, and as an unreasonable restraint upon his liberty and as a denial of the equal protection of the law.

"9. The said statute is discriminatory in that it unreasonably discriminates between those teaching a foreign language in a parochial or private school and those teaching such languages to pupils privately."

"12. It should more fully appear that the court considered and decided the principal question raised in this case, which is: Does the statute operate to deprive the plaintiff in error of his liberty or property without due process of law, as an unreasonable restraint upon his liberty, or as an unreasonable and unjust discrimination against him, contrary to the Fourteenth Amendment to the Constitution of the United States, and to Section 3, Article I of the Constitution of the State of Nebraska?"

The judgment of the court on that motion appears at page 62 of the printed record, and is as follows:

"This cause came on to be heard upon motion of plaintiff in error for a rehearing herein, in which motion complaint is made that we did not pass upon one of the questions directly involved, namely whether the act upon which the information herein is based and the judgment of conviction rendered thereon contravenes the 14th Amendment to the Constitution of the United States. While the opinion filed does not in express terms refer to that question, yet it seems to us it necessarily disposes of it. We there held that the act in question was a valid exercise of the police power of the state, that is to say, that it does not operate to deprive any person, especially the plaintiff in error, of his liberty or property without due process of law, nor as an unreasonable restraint upon his liberty nor to deny him the equal protection of the law. It is not an unreasonable restraint upon any lawful pursuit nor upon the religious liberty of any person. If it did any of those things, then, as we view it, the judgment of conviction could not be up-

held. Hence, our holding that the statute is a valid exercise of the police power of the state, that the information in this case based thereon charges a crime, and that the judgment of conviction based on such information is affirmed necessarily amounts to a holding that the statute does not contravene the 14th Amendment to the Constitution of the United States. Upon due consideration whereof, it is by the court ordered and adjudged that no probable error appearing in the judgment of this court heretofore entered herein, said motion for rehearing be, and same hereby is, overruled and a rehearing herein denied."

ASSIGNMENT OF ERRORS

First. That the Supreme Court of Nebraska in its decision and judgment erred in affirming the judgment of the court below, for the reason that the statute of the State of Nebraska upon which the prosecution herein is based, being Chapter 249 of the Laws of 1919 of the State of Nebraska, is invalid and unconstitutional and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Second. That the Supreme Court of Nebraska erred in deciding and holding that said Chapter 249 of the Laws of 1919 of the State of Nebraska does not deprive the plaintiff in error of his liberty or property without due process of law, nor operate as an unreasonable restraint on his liberty.

Third. That the Supreme Court of Nebraska erred in deciding and holding that said Chapter 249 of the Laws of 1919 of the State of Nebraska does not abridge the privileges and immunities of citizens of the United States, especially those of the plaintiff in error.

Fourth. The Supreme Court of Nebraska erred in deciding and holding that said Chapter 249 of the Laws of 1919 of the State of Nebraska is valid exercise of the police power of the state.

BRIEF OF ARGUMENT

I.

The right to choose and pursue a given legitimate vocation, is within the rights guaranteed by the 14th amendment.

The plaintiff was not convicted of teaching a forbidden subject in a public school, but of teaching a subject in a foreign language in a private (parochial) school (see information, page 3, Printed Record), and the information is based on a statute making it unlawful to teach in any public, private, denominational or parochial school any subject to any person in any language other than the English language.

The vocation of the plaintiff is teaching—a legitimate vocation— and in teaching, as he did, a certain subject in a language other than English he encroached upon the rights of no other person.

In *Ritchie vs. People,* 155 Ill. 98, it is said:

"The general right of every person to pursue any calling and to do so in his own way, provided that he does not encroach upon the rights of others, cannot be taken away from him by legislative enactment."

As said in *Ex parte Harrison,* 212 Mo. 88:

"Whatever renders the exercise of a right more exclusive or less convenient, or more difficult or less effective impairs such right."

"The liberty of pursuit, the right to follow any of the ordinary callings of life, is one of the privileges of a citizen of the United States of which he cannot, under the 14th Amendment, be deprived by legislation."

Butchers' Union S. H. & L. S. L. Co. v. Crescent City L. S. L. & S. H. Co., 111 U. S. 746, 4 Sup. Ct. R. 652.

That case was cited with approval in:

Hooper v. California, 155 U. S. 662, 15 Sup. Ct. R. 207;
Allgeyer v. Louisiana, 165 U. S. 589, 17 Sup. Ct. R. 427;
Cully v. Baltimore & O. R. R. Co., 1 Hughes 539.

Again:

"A man's business, occupation, profession or calling is his property, and is protected and guaranteed by the Constitution of the United States."

"Mr. Justice Field, in the Slaughter House cases, 16 Wall. 36, 97, in speaking of privileges and immunities, said that they include 'the enjoyment of life and liberty with the right to acquire and possess property of every kind. * * * Clearly among these must be placed the right to pursue a lawful employment in a lawful manner without other restraint than such as equally affects all persons.' "

See also:

Adair v. U. S., 208 U. S. 578;
Munn v. Illinois, 94 U. S. 113;
Taylor v. Beckham, 178 U. S. 548;
Powell v. Pennsylvania, 127 U. S. 678.

Mr. Justice Harlan, in his dissenting opinion filed in *Berea College v. The Commonwealth of Kentucky,* 211 U. S. 45, 29 Sup. Ct. Rep. 33 (39), laid down the following self-evident proposition:

"The capacity to impart instruction to others is given by the Almighty for beneficent purposes; and its use may not be forbidden or interfered with by government,—certainly not, unless such instruction is, in its nature, harmful to the public morals or imperils the public safety. The right to impart instruction, harmless in itself or beneficial to those who receive it, is a substantial right of property,—especially, where the services are rendered for compensation. But even if such right be not strictly a property right, it is, beyond

question, part of one's liberty, as guaranteed against hostile state action by the Constitution of the United States. This court has more than once said that the liberty guaranteed by the 14th Amendment embraces 'the right of the citizen to be free in the enjoyment of all his faculties,' and 'to be free to use them in all lawful ways.' "

Citing:

Allgeyer v. Louisiana, 165 U. S. 578, 41 L. ed. 832, 17 Sup Ct. Rep. 427;
Adair v. United States, 208 U. S. 161, 173; 52 L. ed. 436, 442; 28 Sup. Ct. Rep. 277.

Whatever may be said of the conclusion deduced by the author of the foregoing in that case, the truth of the propositions thus advanced will not be questioned.

II.

Imparting knowledge in a foreign language is not inherently immoral cr inimical to the public welfare, and not a legitimate subject for prohibitory legislation.

It will hardly be claimed that because the teaching was in a foreign language, the act was inherently immoral or inimical to the public welfare. In fact, an examination of the statute will show that the legislature did not regard the teaching of a pupil in some language other than English as vicious or inimical to the public welfare. It applies only to schools, leaving teachers and others at liberty to thus teach privately.

It seems to us that the reasoning employed in *State v. Redmond,* 114 N. W. 137 (Wis.), applies here. In that case the validity of a statute providing that whenever an occupant paid for the use of a double lower berth in a sleeping car, he should have the right to direct whether the upper should be opened or closed, unless it was actually used by

some other person who was involved. There the court laid stress on the fact that the statute left it to the occupant of the lower berth to decide whether the upper berth should be put down or left up, holding that allowing such discretion was a confession on the face of the act that it was not considered by the legislature as one deemed to be reasonably vital to the public interest.

The same thought is suggested in *People v. Weiner,* 271 Ill. 74, 110 N. E. 870. There the court dealt with a statute prohibiting the use of second-hand material in making mattresses, quilts or bed comforters, and the sale of such articles thus made. The statute was assailed as unconstitutional. In disposing of the case, the court filed an exhaustive and instructive opinion, in which, among other things, it said:

"The evidence shows that second-hand bedding does not necessarily convey infectious or contagious diseases, and that a lawful business of selling or dealing therein may be carried on without danger to the public health, and the legislature itself recognizes this by permitting persons to remake or renovate or employ others to remake or renovate for their own use any mattress, quilt, or bed comforter, provided the material is sterilized, and it is the fundamental right of every person under the federal and state constitutions to pursue, without let or hindrance, all such callings or pursuit as are innocent in themselves, and not injurious to the public."

In the foregoing, we again find a recognition of the principle that when the legislature by clear implication finds that the practice or pursuit against which the act is leveled does not of itself injuriously affect the public, a measure designed to prohibit it is unconstitutional. It being clear, therefore, both upon reason and legislative finding, that the prohibited acts are not harmful, this measure, insofar as it imposes upon teachers, both lay and clerical,

penalties of fine and imprisonment for the giving of instruction in languages, is violative of their constitutional right to engage in the practice of their chosen profession or calling.

These propositions are in accord with the overwhelming weight of authority if indeed there be any diversity of opinion on the subject. Thus it is said in *Coal Co. v. People,* 17 Ill. 66:

"It has been everywhere held that liberty, as the term is used in the constitution, means not only freedom of the citizen from servitude and restraint, but is deemed to embrace the rights of every man to be free in the use of his powers and faculties, and to adopt and pursue such avocation or calling as he may choose, subject only to the restraints necessary to secure the common welfare."

In the recent case of *Adams v. Tanner,* 244 U. S. 590, this court, among other things, said:

"Prohibition, not regulation, is what is accomplished by the provisions of the Washington agency law (Wash. Laws 1915, Chap. 1), making it criminal to collect fees from workers for furnishing them with employment or information leading to such employment, although fees may still be collected from those seeking workers.

* * * * *

"A suggestion in behalf of the state that while a pursuit of this kind 'may be beneficial to some particular individuals, or in specific cases, economically it is certainly nonuseful, if not vicious, because it compels the needy and unfortunate to pay for that which they are entitled to without fee or price, that is, the right to work,' while possibly indicative of the purpose held by those who originated the legislation, in reason, gives it no support.

"Because abuses may, and probably do, grow up in connection with this business, is adequate reason for hedging it about by proper regulations. But this is not enough to justify destruction of one's right to follow a distinctly use-

ful calling in an upright way. Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices; and as to every one of them, no doubt, some can be found quite ready earnestly to maintain that its suppression would be in the public interest. Skillfully directed agitation might also bring about apparent condemnation of any one of them by the public. Happily for all, the fundamental guaranties of the constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked.

* * * * *

"In *Allgeyer v. Louisiana,* 165 U. S. 578, 589; 17 S. Ct. 427, 41 U. S. (L. Ed.) 832, we held invalid a statute of Louisiana which undertook to prohibit a citizen from contracting outside the state of insurance on his property lying therein because it violated the liberty guaranteed to him by the Fourteenth Amendment. 'The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned.'

" 'If, looking at all the circumstances that attend, or which may ordinarily attend, the pursuit of a particular calling, the state thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the substance of the matter, they can say that the statute enacted professedly to protect the public morals has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law.' Citing: *Booth v. Illinois,* 184 U. S. 425, 22 S. Ct. 425, 46 U. S. (L. Ed.) 623.

* * * * *

Again:

"'If there existed a condition of affairs concerning which the legislature of the state, exercising its conceded right to enact laws for the protection of the health, safety, or welfare of the people, might pass the law, it must be sustained; if such action was arbitrary interference with the right to contract or carry on business, and having no just relation to the protection of the public within the scope of legislative power, the act must fail. Citing: *McLean v. Arkansas,* 211 U. S. 539, 547, 548; 29 S. Ct. 206; 53 U. S. (L. Ed.) 315.'

"'The Fourteenth Amendment protects the citizen in his right to engage in any lawful business, but it does not prevent legislation intended to regulate useful occupations which, because of their nature or location, may prove injurious or offensive to the public. Neither does it prevent a municipality from prohibiting any business which is inherently vicious and harmful. But, between the useful business which may be regulated and the vicious business which can be prohibited lie many non-useful occupations, which may, or may not be harmful to the public, according to local conditions, or the manner in which they are conducted. *Murphy v. California,* 225 U. S. 623, 628; 32 S. Ct. 697; 56 U. S. (L. Ed.) 1229.'

"We are of opinion that Initiative Measure Number 8, as construed by the Supreme Court of Washington, is arbitrary and oppressive, and that it unduly restricts the liberty of appellants, guaranteed by the Fourteenth Amendment, to engage in a useful business. It may not therefore be enforced against them."

III.

The statute, as construed by the Supreme Court of Nebraska, is prohibitive, not regulatory of a legitimate vocation.

The statute prohibits giving instruction to any person in any school, public or private, religious or secular, in any

language other than the English, or teaching a foreign language in any such school to one who has not passed the eighth grade.

That is to say, that this statute, as construed by the Supreme Court of Nebraska, makes it unlawful to impart instruction to any person, in any such school, in the principles of our government, the laws to which they are subject, in matters of faith and morals, or in any department of art or science, in any language other than English, although the pupil may be unable to receive such instruction in that language.

As thus construed, the statute also makes it unlawful to teach a foreign language in any such school to any person, whatever his age, unless he has successfully passed the eighth grade.

IV.

The statute in question is not a legitimate exercise of the police power.

The exercise of the police power can be justified only when it adds, in a substantial way, to the security of the fundamental rights.

That governments are instituted to secure the inalienable rights of men is axiomatic. That government necessarily implies more or less restraint on the exercise of those rights, is readily conceded. But every restrictive measure should carry with it, as compensation, added security of the fundamental rights, otherwise it is antagonistic to the very purpose for which the government was instituted.

That a law requiring that all persons within a certain age should be required to attend the public schools for a

certain period, and, that during such period, they should receive instruction in the language of the country, would be a valid exercise of the police power, calculated to promote the purpose for which the government was instituted, may be conceded. But how a statute which closes the door of knowledge to all who cannot receive instruction in that language, or which stands in the way of their acquiring another language in addition to the language of the country, unless they have been so fortunate as to have successfully passed the eighth grade, adds in any substantial way to the security of the rights the government was instituted to secure, in our opinion, is beyond human ken. In other words, the relation of a law, fixing a minimum of education, to the common good is readily perceived, but how one fixing a maximum—limiting the field of human knowledge—can serve the public welfare or add substantially to the security of life, liberty or the pursuit of happiness is inconceivable.

In *State v. Redmond* (Wis.), 114 N. W. 137, supra, it was, quoting from the syllabus:

"A police regulation is no more legitimate and valid than a law in any other field if it in fact violates any principle entrenched in the constitution.

"It is not every enactment which will to some extent promote health, comfort or convenience that is a legitimate exercise of the police power.

"To constitute a legitimate exercise of the police power, the exigency to be met must so concern the public welfare, and be sufficiently vital thereto as to suggest some reasonable necessity for a remedy affordable only by legislative enactment."

In *Mugler v. Kansas*, 123 U. S. 623, it is said:

"The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed

are under a solemn duty—to look at the substance of things whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge and thereby give effect to the constitution."

The instructive case of *Wyeth v. Board of Health,* 200 Mass. 474, involved legislation prohibiting the burial of the dead except by licensed undertakers, and restricting such licenses to licensed embalmers. It was held that the burial of the dead was so related to the public health and welfare as to be the subject of legislative regulation, but that embalming has no such relation to the public health and cannot be made the subject of statutory regulation.

But no more apt statement of the law is to be found in the books than that of our own Court in *State v. Sperry et al,* 94 Neb. 785, viz.:

"Statutes enacted in the exercise of the police power must not violate rights guaranteed by the constitution. The legislature may not under the guise of protecting public interest arbitrarily interfere with private business."

One claim put forward is, that the statute forwards the work of Americanization. But in our desire for the Americanization of our foreign born population we should not overlook the fact that the spirit of America is liberty and toleration—the disposition to allow each person to live his own life in his own way, unhampered by unreasonable and arbitrary restrictions.

This spirit has often manifested itself in our resentment, and has at times prevented the efforts of tyrannical

governments to suppress minority languages. This is well set forth in the following from the New York Independent:

"One of the chief indictments that we have brought against Germany is the interference with the use of French in Alsace-Lorraine, Danish in Schleswig, and Polish in Posen. Daudet's heart-rending story of 'the last lesson' of the French schools in the conquered provinces has inspired us to fight for their transfer to France so that the people may under this democratic government teach and learn in either French or German. The punishment by the Germans of the little Polish children for reciting their catechism at the public schools in their native tongue aroused deep indignation not only in America, but even in Germany. When the czar prohibited the Lithuanian press, it was America that came to the rescue by printing papers and books in Lithuanian for smuggling into Russia. The apologists for kaiser and czar argued that Poland and Lithuania were disloyal and that the language was used to cultivate the national spirit. This was true, but the American people rightly refused to consider it a justification for the denial of one of the primary rights of humanity.

"When Kossuth came to America to plead for the right of Hungarians to their native tongue he was received with enthusiastic welcome, but when the Hungarians took their turn at tyranny and tried to suppress Rumanian in school and court and church, American sympathy turned against the Hungarians.

In the same spirit Americans have taken an active part in the movements for the cultivation of the Czech, Irish, Ukranian, Hebrew, Finnish, Serbian, Armenian, and other languages threatened with extinction. Some of us have been skeptical of the advantages of multiplying languages, but we were all agreed that it was wrong to interfere with them and we pointed to Switzerland and the United States as examples of the actual benefits of toleration."

V.

The law, as construed by the Supreme Court of Nebraska, operates to deny the plaintiff in error the equal protection of the law.

The law is directed against the teaching in or of a foreign language in public, private, denominational and parochial schools. It leaves those engaged in giving private lessons in such languages free to pursue their vocations.

When this law was before the Supreme Court of Nebraska on a former occasion, the court said:

"If the law means that parents can teach a foreign language, or private tutors employed by men of means may do so, but that poorer men may not employ teachers to give such instruction in a class or school, it would be an invasion of personal liberty, discriminative, and void, there being no reasonable basis of classification; but if such instruction can be given in addition to the regular course, and not so as to interfere with it, then equality and uniformity results, and no one can complain." *Neb. Dist. Ev. Synod, etc., v. McKelvie, et al,* 104 Neb. 93.

But in the case at bar, the court, referring to the foregoing, said:

"Neither the language law nor the compulsory school act mentions the phrase 'regular school hours.' Nor is there any direction in either of those statutes as to how many hours a day, or as to what time of day, school shall be in session. The language law declares that certain subjects shall not be taught in school. Obviously, it was intended that such teachings should not take place whenever the pupils of the school should be assembled in the school for the purpose of receiving instruction. So far, then, as it may have been indicated in the former opinion of Nebraska District E. L. S. v. McKelvie, supra, that the law was aimed to apply only to those school hours which should be set apart

for the teaching of the so-called common school branches, or set apart as 'regular school hours,' we believe that opinion should be modified." (Printed Record, page 54.)

"A statute arbitrarily discriminating against one class in the transaction of the business of a lawful occupation, and leaving unaffected by such discriminatory enactment other persons, or classes of persons, engaged in acquiring property in a manner not distinguishable in character from that in which the class discriminated against is employed, is in contravention of the constitutional guarantees of liberty and property."

In *Bailey v. People,* 83 Am. St. Rep. 116, the court said:

"As we said in *Frorer v. People,* 141 Ill. 181, 31 N. E. 397: 'If A is denied the right to contract and acquire property in a manner which he has hitherto enjoyed under the law, and which B, C, and D are still allowed by the law to enjoy, it is clear that he is deprived of both liberty and property to the extent that he is thus denied the right to contract.'

"In *Millett v. People,* 117 Ill. 294, 57 Am. Rep. 869, 7 N. E. 631, an enactment which prohibited the owners and operators of coal mines from making contracts which other owners of property and employers of labor might lawfully make was held unconstitutional, and could not be maintained as a lawful exercise of the police power. The same doctrine was reiterated in *Frorer v. People,* 141 Ill. 176, 31 N. E. 395. In *Ritchie v. People,* 155 Ill. 98, 46 Am. St. Rep. 315, 40 N. E. 454, an enactment which prohibited contracts for the employment of females to work for more than eight hours in any one day in any factory or workshop where clothing, wearing apparel, or articles of a similar nature were manufactured, was held to be partial and discriminatory in character, and void, as contravening constitutional guaranties, for the reason that other manufacturers and their employes, though engaged in other branches of industry, were not forbidden to so contract. *In Harding v. People,* 160 Ill. 459, 52 Am. St. Rep. 344, 43 N. E. 624, an act which made 'that an offense if committed by a person en-

gaged in one branch of mining which if done by persons in another branch of the same business is lawful, without any reason for distinction between the two,' was declared to be unconstitutional. In *Eden v. People,* 161 Ill. 296, 52 Am. St. Rep. 365, 43 N. E. 1108, we held a statute which made it unlawful for a barber to follow his ordinary pursuit on Sunday, and which did not place the like restriction on any other class of business, deprived persons following that avocation of property and unjustly discriminated against them, and could not be sustained as a valid enactment under the police power of the state, because of the unequal operation of the law. The doctrine of *Chicago v. Netcher,* 183 Ill. 104, 75 Am. St. Rep. 93, 55 N. E. 707, is an attempt to deny a property right to a particular class in a community where all other members of the community are left to enjoy it as an unwarrantable interference with constitutional rights, whether such denial is contained in a statute or in an ordinance passed under a statute."

In *Dunahoo v. Huber* (Iowa), 171 N. W. 123, it was held that a statutory provision making it a crime for employees to accept tips, but which, by implication, left the employers free to do so, was unjustly discriminatory and unconstitutional.

In *State v. Sloan,* 49 N. J. L. 356, the court said:

"If these objects are distinguished from others by characteristics evincing a peculiar relation to the legislative purpose, and showing the legislation to be reasonably appropriate to the former and inappropriate to the latter, the objects will be considered, as respects such legislation, to be a class by themselves, and legislation affecting such a class to be general. But if the characteristics, used to distinguish the objects to which the legislation applies from others, are not germane to the legislative purpose, or do not indicate some reasonable appropriateness in its application, or if objects with similar characteristics and like relation to the legislative purpose have been excluded from the operation of the law, then the classification would be incomplete and faulty, and the legislation not general, but local or special."

In *State v. Ramsey,* 48 Minn. 236, a law declaring the emission of dense smoke in a city to be a nuisance, but exempting from its operation "manufacturing establishments using the entire product of combustion, and the heat, power and light produced thereby, within the building wherein the same are generated, or within a radius of three hundred feet therefrom," was held unconstitutional, the court saying:

"No arbitrary distinction between different kinds or classes of business can be sustained, the conditions being otherwise similar. The statute is leveled against the nuisance occasioned by dense smoke, and it can make no practical difference in what business the owners or occupants of the buildings in which smoke is produced are engaged, or whether the heat evolved from the combustion of the fuel producing such smoke is applied to the generation of steam or other useful purposes; or, further, whether steam power is used in manufacturing, or is applied to other uses as a grain elevator or hoisting apparatus in a warehouse."

It was held in *City of Lincoln v. Lincoln Gas & Electric Light Co.,* 182 Fed. 926, that an ordinance imposing an occupation tax upon gas companies furnishing gas to the public for light, heat and power was an arbitrary and unconstitutional classification because it took no account of another company in the same city which was then furnishing light, heat and power to the public by electric current. The same question came later in another suit before this court and was decided in the same way. *City of Lincoln v. Lincoln Gas & Electric Light Co.,* 100 Neb. 182.

In *Hines v. Williams,* 166 N. W. (Mich.) 938, a statute, providing for the sterilization of mentally defective or insane persons, maintained wholly or in part at public expense in public institutions, but making no provisions for such persons located elsewhere, was condemned as unconstitutional classification. It was said that the object of the

law being to prevent the propagation of epileptics, it was in reason just as applicable to those who were not as to those who were confined in public institutions.

In *Smith v. Board of Examiners,* 88 Atl. 863, the Supreme Court of New York, dealing with a statute substantially identical with the Michigan law, reached the same conclusion as the Michigan Court.

CONCLUSION

We respectfully submit that now, that the war spirit has subsided and our minds no longer inflamed by hate or clouded by passion, and we are again able to see with clear vision, statutes of this character must be regarded merely as petty and irritating restrictions on the natural liberty of the individual, and which, instead of unifying, tend to divide the people; instead of fostering patriotism, tend to make the government odious; instead of promoting the purpose for which the government was instituted, tend to thwart that purpose. Such statutes, tested by the avowed purpose of the government, by the spirit that gave birth, by the Fourteenth Amendment, as construed by this Court in scores of cases, operate as unreasonable and arbitrary restraints on the liberty of the individual, his pursuit of happiness, to deprive him of his property without due process of law, contrary to the fundamental law of the land.

Respectfully submitted,

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Number 326.

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1922.

ROBERT T. MEYER, PLAINTIFF IN ERROR,

v.

THE STATE OF NEBRASKA, DEFENDANT IN ERROR.

BRIEF AND ARGUMENT OF STATE OF NEBRASKA, DEFENDANT IN ERROR.

CLARENCE A. DAVIS, Attorney General of Nebraska,
Attorney for State of Nebraska, Defendant in Error.

MARY WHEELER, Assistant Attorney General of Nebraska,
Of Counsel.

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CLARENCE A. DAVIS, Attorney General of Nebraska,
Attorney for State of Nebraska, Defendant in Error.

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STATEMENT.

The criminal proceeding, which is the basis of this proceeding in error, when initiated, involved an attempt to undermine and emasculate the Nebraska foreign language law of 1919 (which hereinafter for convenience in this brief is termed the Siman Law to distinguish it from the Nebraska Foreign Language Law of 1921, which will be termed the Norval Law). In 1921 the Siman law was repealed, consequently the only matter involved in this appeal is the imposition of a $25.00 fine.

The history of the case is as follows: On April 9, 1919, the Legislature of Nebraska enacted its first foreign language law, the Siman law, known as Chapter 249 of the Laws of 1919, which reads as follows:

> "INSTRUCTION IN FOREIGN LANGUAGES PROHIBITED.—No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any other language than the English language.
>
> "SAME, EXCEPTION.—Languages, other than the English language, may be taught as languages only after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county in which the child resides.
>
> "VIOLATION, PENALTY.—Any person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction, shall be subject to a fine of not less than twenty-five ($25) dollars, nor more than one hundred ($100) dollars or be confined in the county jail for any period not exceeding thirty days for each offense."

An immediate attack was made upon the constitutionality of this law. On December 26, 1919, the Supreme Court of Nebraska, in the case of *Nebraska District of Evangelical Lutheran Synod of Missouri, et al* v. *McKelvie, the Governor, et al*, reported in 104 Neb. 93, held the Siman law constitutional, dissolved the injunction issued against its enforcement, and in its decision construed the statute to permit the teaching of foreign languages outside of regular school hours.

Upon learning of this decision and this construction of the statute, in January, 1920, the Lutheran Parochial School near Hampton, Nebraska, in which plaintiff in error Meyer, was a teacher, by vote of its board, changed its school hours. Previous to the Siman law decision the school hours were from 9 A. M. to 12 noon, and from 1 P. M. to 4 P. M. When the authorities of the school learned that the statute had been construed to permit the teaching of German

to children of tender years outside of school hours the hours of the afternoon session were changed from 1 P. M. to 4 P. M. to 1:30 P. M. to 4 P. M., and the time from noon until 1:30 P. M. was specified as a recess. The school, however, was convened at 1 P. M. and instruction given in German, contrary to the statute from 1. to 1:30 P. M. (Testimony of Brommer, printed record, Pg. 18, 19, Qs. 17 to 22, 39; Raymond Parpart,, record, Pg. 21, 22, Qs. 68, 77 to 88; Frank Edgerton, record, Pg. 30, Qs. 192 to 212).

The testimony in the record shows that the plaintiff in error, Meyer, on May 25, 1920, deliberately taught reading in the German language to a boy ten years of age, who was in the fifth grade of the parochial school in which the plaintiff Meyer was a teacher, this instruction being given between 1 and 1:30 P. M. in said school (Testimony of Raymond Parpart, record, Pg. 30, Qs. 192 to 212; Robert T. Meyer, record, Pg. 39, Qs. 297 to 300; Arthur S. Nelson, County Superintendent, record, Pg. 25, Qs. 132 to 158).

Deeming this change of school hours a mere subterfuge, and a patent attempt to evade the plain provisions of the statute, the plaintiff in error, Meyer (hereinafter in this brief for the sake of convenience termed the defendant) was charged and convicted in the County Court of Hamilton County, Nebraska, of unlawfully teaching reading in the German language on May 25, 1920, to Raymond Parpart, a ten year old boy, who had not passed the eighth grade examination, in violation of the statute known as the Siman Law, and fined $25.00 and costs.

An appeal was taken to the District Court; the defendant tried on the 14th day of December, 1920, and again convicted and fined the same amount (Record, Pgs. 3-5, 12).

When the appeal was originally taken to the Supreme Court of Nebraska, the issue was important, to-wit: whether a parochial school could by arbitrarily changing its school

hours, devote a portion of the time allowed for instruction in ordinary school branches to inculcating minor children with the elements of foreign languages before said children had passed the eighth grade examination, and before they were thoroughly grounded in English, and thus evade the intent and purpose of the Nebraska statute, which prohibited the teaching of foreign languages to pupils under the eighth grade. Of course, if the school hours could be changed to allow a half hour of recess, which could be devoted to the teaching of foreign languages to young children, the school hours could be changed to include a recess of three or four hours in which instruction in foreign languages could be given, and the purpose of the statute nullified.

During the pendency of the appeal to the Supreme Court of Nebraska, and while said appeal was pending, and perhaps because the result of the appeal was feared by the legislature then in session, the Siman act was amended, supplemented and repealed by Chapter 61 of the Laws of Nebraska for 1921 (the Norval Act), which reads as follows and may be found in Sections 6457 to 6462, Compiled Satutes of Nebraska, 1922:

> "ENGLISH, OFFICIAL LANGUAGE.—The English language is hereby declared to be the official language of this state, and all official proceedings, records and publications shall be in such language, and the common school branches shall be taught in said language in public, private, denominational and parochial schools.
>
> "OTHER LANGUAGES, TEACHING FORBIDDEN.—No person, individually or as a teacher, shall, in any private, denominational, or parochial or public school, teach any subject to any person in any language other than the English language.
>
> "SAME, EXCEPTIONS.—Languages other than the English language may be taught as languages only, after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county or the city superintendent of the city in which the child resides. Provided, that the provisions of this act shall not

apply to schools held on Sunday or on some other day of the week which those having the care and custody of the pupils attending same conscientiously observe as the Sabbath, where the object and purpose of such schools is the giving of religious instruction, but shall apply to all other schools and to schools held at all other times. Provided, that nothing in this act shall prohibit any person from teaching his own children in his own home any foreign language.

"UNLAWFUL TO DISCRIMINATE.—It shall be unlawful for any organization, whether social, religious or commercial, to prohibit, forbid or discriminate against the use of the English language in any meeting, school or proceeding, and for any officer, director, member or person in authority in any organization to pass, promulgate, connive at, publish, enforce or attempt to enforce any such prohibition or discrimination.

"VIOLATION, PENALTY.—Any public official, teacher, instructor, or other person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof be fined in any sum not exceeding one hundred ($100.00) dollars or less than twenty-five ($25.00) dollars, or be confined in the county jail for a period not exceeding thirty days for each offense.

"SECTIONS INDEPENDENT.—Should the courts declare any portion of this act unconstitutional such decision shall affect only the portion so declared to be unconstitutional and shall not affect any other section or any other part of this act, and it is further provided that each part of this act so far as an inducement for the passage of this act is concerned is independent of every other part.

"REPEAL.—Chapter 249, of the Session Laws of Nebraska for 1919, entitled, 'An Act relating to the teaching of foreign languages in the State of Nebraska,' is hereby repealed.

"EMERGENCY.—Whereas, an emergency exists this act shall be in force from and after its passage and approval."

Approved April 14, 1921.

It will be noted that the Norval law of 1921, specifically forbids instruction in foreign language to children under the eighth grade *in all schools and at all times* with the exception of Sunday schools where the purpose of such school is the giving of religious instruction. The constitutionality of the Norval law was sustained by the Nebraska Supreme Court in *Nebraska District of Evangelical Lutheran Synod* v. *McKelvie,* decided in 187 N. W. 927, an appeal from which decision is now pending in this court as Number 28990, October Term, 1922, No. 440.

We are not concerned with the Norval law in the instant appeal. The constitutionality of that statute will be brought before this court in the Lutheran Synod case No. 440 of the October Term 1922, to be argued at a later date.

The Siman law of 1919, under which the defendant Meyer was convicted, having been repealed, we are no longer concerned, as a matter of public interest, with its interpretation or its constitutionality. The only issue involved in this appeal, except perhaps that of an entering wedge for the determination of *Nebraska District* v. *McKelvie,* is whether the defendant Meyer should stand convicted of a misdemeanor and be compelled to pay the fine of $25.00 imposed because he overstepped the criminal statutes.

The record does not show that the constitutionality of the Siman act either under the state or federal constitution was an issue in the county or district court. The constitutional objections were not set forth in defendant's petition in error in the Supreme Court of Nebraska, the foundation of his appeal to that court (record, Pgs. 1 and 2) nor in defendant's motion for a new trial in the district court (record, Pgs. 11 to 12) which was the basis of his appeal to the Supreme Court of Nebraska.

The questions raised by the motion for a new trial and the petition in error to, and argued before the Supreme Court of Nebraska, were:

(1) The sufficiency of the information as a matter of law.

(2) Whether or not the verdict was contrary to the evidence.

(3) Whether the court's instruction No. 8 (record Pg. 8), as to the shifting of school hours being a subterfuge, was correct.

No federal question was argued before the Supreme Court of Nebraska, although federal questions were discussed in the briefs of both sides in the Supreme Court of Nebraska. Argument on the constitutionality of this law was orally waived by counsel for defendant Meyer in the Supreme Court of Nebraska.

The constitutionality of the Nebraska statute as interfering with religious worship is not involved in this appeal, although it is in the *Evangelical Luthern Synod* v. *McKelvie* case which will be subsequently heard by this court, consequently the religious aspect of the legislation will not be treated in this brief.

ERRORS RELIED ON FOR REVERSAL.

The defendant Meyer in his brief predicates his argument for a reversal on the alleged unconstitutionality of the Nebraska statute under the Fourteenth Amendment to the Constitution of the United States, and urges that the Nebraska statute

(1) Deprives the defendant of his liberty;

(2) Abridges his privileges and immunities as a citizen of the United States (it will be noted that the record contains no proof that he is a citizen);

(3) Is not a legitimate exercise of the police power.

POINTS AND AUTHORITIES.

I.

The federal constitutional question was injected into this case as an afterthought and too late to permit its review by the Supreme Court of the United States.

Osborne v. *Clark,* 204 U. S. 565.
St. L. & S. F. Ry. Co. v. *Shepard,* 240 U. S. 240.
Sayward v. *Denny,* 158 U. S. 180.
Hulbert v. *City of Chicago,* 202 U. S. 275.
Marvin v. *Trout,* 199 U. S. 212.
Con. Turn Pike v. *Nfk. Ry. Co.,* 228 U. S. 326.
Calif. Powder Works v. *Davis,* 151 U. S. 389.
Fowler v. *Lamson,* 164 U. S. 252.
Heim v. *McCall,* 239 U. S. 175.
Cochrane Oil Co. v. *Arnaudt,* 199 U. S. 182.

II.

The Nebraska Foreign Language Statute (Siman Law) was a legitimate exercise of the police power of the state.

Meyer v. *State,* (Neb.) 187 N. W. 100, decision below, pages 49 to 55 of the printed record.
Nebr. Dist. Evang. Synod, etc. v. *McKelvie,* 104 Neb. 93.
Nebr. Dist. Evang. Synod v. *McKelvie,* (Norval Law case), 187 N. W. 927.
Freund on Police Power, Sections 143, 479, 264 to 266.
Block v. *Hirsh,* 256 U. S. 135.
Pohl v. *State,* (Ohio), 102 Ohio State 474.
Bartels v. *State,* (Iowa) 191 Iowa 1060.
Muller v. *Oregon,* 208 U. S. 412.
Noble State Bank v. *Haskell,* 219 U. S. 104, 575.
Wenham v. *State,* 65 Neb. 394.
C. B. & Q. R. R. Co. v. *McGuire,* 219 U. S. 549.
Halter v. *Neb.* 205 U. S. 34.
McLean v. *Arkansas,* 211 U. S. 539.
Holden v. *Hardy,* 169 U. S. 366.
Jacobson v. *Massachusetts,* 197 U. S. 11.

Atkin v. *Kansas,* 191 U. S. 207.
Tanner v. *Little,* 240 U. S. 369.
Slaughter House Cases, 16 Wallace 36.
Murphy v. *Calif.,* 225 U. S. 623.
Booth v. *Illinois,* 184 U. S. 425.
Wilson v. *New,* (Adamson Law case) 243 U. S. 332.
Second Employers Liability Cases, 223 U. S. 1.
Matter of Gregory, 219 U. S. 216.
Rast v. *Van Deman,* 240 U. S. 342.
Pitney v. *Wash.,* 240 U. S. 387.
Arizona Employers Liability Cases, 250 U. S. 400.
Gilbert v. *Minn.,* 254 U. S. 325.
Barbier v. *Connolly,* 113 U. S. 27.
Mugler v. *Kansas,* 123 U. S. 623.
Foreign Language Laws of twenty-one states detailed on pages 24-29 of this brief.

III.

The Nebraska Satute does not illegally interfere with the defendant Meyer's occupation as a teacher.

Wenham v. *State,* 65 Neb. 394.
Barbier v. *Connolly,* 113 U. S. 27.
Mugler v. *Kansas,* 123 U S. 623.
Halter v. *Neb.* 205 U. S. 34.
McLean v. *Arkansas,* 211 U. S. 539.
Muller v. *Oregon,* 208 U. S. 412.
And cases cited under Point. II.

IV.

The Nebraska foreign language legislation (Siman Act) does not substantially deny defendant Meyer the equal protection of the law.

Evang. Lutheran Synod v. *McKelvie,* 187 N. W. 927.
Halter v. *Neb.* 205 U. S. 34.
Pohl v. *State,* 102 Ohio State 474.
Miller v. *Wilson,* 236 U. S. 373.
C. B. & Q. R. R. Co. v. *McGuire,* 219 U. S. 549.
Lindsley v. *Nat. Carbonic Gas Co.,* 220 U. S. 61.

Johnston v. *Kennecott Copper Corp,* 248 Fed. 407.
Quong Wong v. *Kirkendale,* 223 U. S. 59.
Lower Vein Coal Co. v. *Industrial Board of Ind.,* 255 U. S. 144.

ARGUMENT.

I.

The Federal constitutional question was injected into the case as an afterthought and too late to permit its review by the Supreme Court of the United States.

No federal question or claim of unconstitutionality was made in the petition in error to the Nebraska Supreme Court (record, Pgs. 1 and 2) nor in the motion for a new trial in the state district court (Record, Pg. 11), nor in any pleading or filed paper until the motion for a rehearing in the Nebraska Supreme Court after the decision in said court (Record, Pgs. 57 to 60). No federal question was mentioned in the opinion of the Nebraska Supreme Court, nor considered in said opinion (record, Pgs. 49 to 55). The question of constitutionality under the federal constitution was discussed in the brief but expressly waived by counsel for defendant Meyer in the oral argument before the Nebraska Supreme Court.

The decision in the Nebraska court rested on the sufficiency of the information, the sufficiency of evidence to sustain the verdict and the correctness of the court's instruction No. 8 to the matter of subterfuge (record, Pg. 8; Opinion below, record pp. 49-55).

Only after the determination by the Nebraska Supreme Court of the matters argued before it was this federal question raised, and then only in a motion for a rehearing. Judge Morrissey, one of the two dissenting judges of a court composed of seven judges, reasoning by inference in a memoranda denying the defendant's motion for a rehearing before the Nebraska Supreme Court (record Pgs. 62 and 63) said that the Supreme Court had necessarily passed on the question of whether the Nebraska Language Law violated the 14th

Amendment to the Constitution of the United States, upon the assumption that the Nebraska court would not have sustained the statute had it contravened the 14th Amendment to the Federal Constitution. The assignment of errors to the Supreme Court of the United States (record, Pg. 64) filed after the arguments presented in the state courts, fairly teems with allegations of violation of the federal constitution. These questions should have been presented and argued to the Nebraska Supreme Court. Their inclusion in the motion for a rehearing and on the appeal presented to the United States Supreme Court is a mere afterthought.

It would seem that the question of federal unconstitutionality was raised too late to permit a review in this court.

St. L. & S. F. Ry. Co. v. *Shepard,* 240 U. S. 240.
Osborne v. *Clark,* 204 U. S. 565.
Sayward v. *Denny,* 158 U. S. 180.
Hulbert v. *City of Chicago,* 202 U. S. 275.
Marvin v. *Trout,* 199 U. S. 212.
Con. Turn Pike v. *Norfolk Ry. Co.,* 228 U. S. 326.

The fact that Judge Morrissey of the Nebraska Supreme Court certified a federal question to this court is insufficient. The fact that the state court considered the federal question must appear from the record itself and not from the certificate of a judge. It should have been raised in the state court by appropriate assignments of error.

The petition for a writ of error, briefs of counsel and assignments of error in the Supreme Court of the United States form no part of the record for the purpose of proving that the federal question was duly raised in the court below.

Calif. Powder Works v. *Davis,* 151 U. S. 389.
Fowler v. *Lamson,* 164 U. S. 252.

The general rule is that it must clearly and unmistakably appear from the opinion of the highest court of the state that

a federal question was there raised and there actually decided.

Heim v. *McCall*, 239 U. S. 175.
Cockrane Oil Co. v. *Arnaudet*, 199 U. S. 182.

If, however, this court determines this preliminary objection adversely to the defendant in error, like a military leader whose outposts are driven in we retire to our main line of defense and in this brief endeavor to sustain the validity of the language legislation as a legitimate exercise of the police power, and to answer the defendant's contention that the legislation interferes with his lawful occupation as a teacher and denies him the equal protection of the law.

II.

The Nebraska Foreign Language Statute (Siman Law) was a legitimate exercise of the police power of the State.

An examination of the statute set forth in full at page 2 of this brief shows that the act forbids the teaching of foreign languages to children of tender years before such children are grounded in the English tongue. The statute does not forbid the use of foreign languages by persons of maturity or prevent the study of foreign languages by persons who have passed the eighth grade. It does not in any way interfere with bona fide religious instruction or with any legitimate religion.

The object of the legislation as is so clearly pointed out by the Nebraska Supreme Court in *Nebraska District* v. *McKelvie*, 104 Neb. 93, and in the second case, 187 N. W. 927, and in the decision below (record, Pgs. 49 to 55), and by the Ohio Supreme Court in *Pohl* v. *Ohio*, 102 O. St. 474, and by the Iowa Supreme Court in *Bartels* v. *State*, 191 Iowa 1060, was to create an enlightened American citizenship in sympathy with the principles and ideals of this country, and to prevent children reared in America from being trained and educated in foreign languages and foreign ideals before they

have had an opportunity to learn the English language and observe American ideals. It is a well known fact that the language first learned by a child remains his mother tongue and the language of his heart. The purpose of the statute is to insure that the English language shall be the mother tongue and the language of the heart of the children reared in this country who will eventually become the citizens of this country.

The statute is a part of a general Americanization program to bring our citizenry towards the belief that the American government is one of, by, and for the people, that it is a government whose just powers are derived from the consent of the people, that it is a true democracy established in a republic, as a sovereign nation of forty-eight sovereign states, a perfect union, one and inseparable, established on principles of freedom, equality, justice and humanity, for the foundation and perpetuation of which American patriots have and will sacrifice their lives and imperil their fortunes.

These foreign language statutes are no more difficult to sustain under the police power of the state than the Bank Guarantee Act, the Workmen's Compensation Acts, the Female Labor Laws, and Tenement Housing legislation.

As is shown by the decisions above quoted isolated communities exist in Nebraska where foreign languages are used; which communities are under the control of foreign leaders and cannot be reached by American newspapers, or except through the medium of a foreign tongue; that these communities are growing up as little Germanys, little Italys and little Hungarys; that the children are being reared in a foreign atmosphere and in and by foreign language, and that so long as these conditions continue, such communities cannot well be assimilated into our American Republic. It was to obviate this danger to the state that the Nebraska legislature required that the primary education of Nebraska children should be exclusively in English.

Taking the test laid down as to the legitimate exercise of the police power by Prof. Freund, in his excellent treatise on the police power (Section 143):

"Does a danger exist?" "Is it of sufficient magnitude?" Any intelligent observer can see it. The legislature so considered it. The Nebraska Supreme Court called particular attention to it in the decision below and in the two cases of *Evangelical Lutheran Synod* v. *McKelvie, the Governor et al.*, 104 Neb. 93 and 187 N. W. 927.

"Does it concern the public?" The education of the youth, the training for common citizenship is of vital public concern in a government which depends upon the intelligence of the electorate.

"Does the proposed measure tend to remove it?" The menace of unassimilated social groups differentiated by language will disappear in a generation when all children are first required to master English in their mother tongue. A common language is our greatest assimilator.

"Is the restraint a requirement in proportion to the dangers?" The statute requires only a foundation in English before the study in other languages is attempted. After a child has finished the eighth grade any foreign language may be studied. "English first" is the purpose of the statute.

"Is it possible to secure the object sought without impairing essential rights and principles?" The constitutionality of legislation in respect to hours and wages of railway trainmen was upheld in the Adamson law case, *Wilson* v. *New*, 243 U. S. 332; regulations in respect to the working hours of women in *Muller* v. *Oregon*, 208 U. S. 412; compensation for industrial accidents in *Employers Liability Cases*, 223 U. S. 1; *Arizona Employers Liability Cases*, 250 U. S. 400, and legislation regulating rents in municipalities in *Block* v. *Hirsh*, 256 U. S. 135. If it is within the police power of the state to regulate wages, to legislate respecting housing condi-

tions in crowded cities, to prhoibit dark rooms in tenement houses, to compel landlords to place windows in their tenements which will enable their tenants to enjoy the sunshine, it is within the police power of the state to compel every resident of Nebraska to so educate his children that the sunshine of American ideals will permeate the life of the future citizens of this republic. A father has no inalienable constitutional right to rear his children in phyhical, moral or intellectual gloom. As to all these matters the judgment of the legislature is to be taken as correct unless it appears clearly wrong.

Again in his work on Police Power, Prof. Freund, paragraph 479, says:

> "The state has power to control the education of minors and in doing so may further the interests of nationality, but where minors are not concerned, the pursuit of truth and learning must be absolutely free. These principles are so fully recognized by the practice of legislation that they stand unquestioned even if lacking express judicial confirmation."

And in paragraph 274 the same learned author lays down the proposition that the direction of education of children is certainly not beyond the police power, and that this is true whether the education be carried on in private or public schools.

In upholding the statute under consideration the Supreme Court of Nebraska in the Siman law case, *Nebraska District of Evangelical Lutheran Synod* v. *McKelvie*, 104 Neb. 93, 99, said:

> "The ultimate object and end of the state in thus assuming control of the education of its people is the upbuilding of an intelligent American citizenship, familiar with the principles and ideals upon which this government was founded, to imbue the alien child with the tradition of our past, to give him knowledge of the lives of Washington, Franklin, Adams, Lincoln and other men who lived in accorda e with such ideals, and to

teach love for his country, and hatred of dictatorship, whether by autocrats, by the proletariat, or by any man or class of men.

"Philosophers long ago pointed out that the safety of a democracy, or republic, rests upon the intelligence and virtue of its citizens. 'The safety of the people is the supreme law.' * * * The state should control the education of its citizens far enough to see that it is given in the language of their country, and to insure that they understand the nature of the government under which they live, and are competent to take part in it. * * * It has been said by the United States Supreme Court in *Gundling* v. *Chicago*, 177 U. S. 183, that the courts will not interfere with the operation of a regulative statute, 'unless the regulations are so utterly unreasonable and extravagant in their nature and purposes that the property and personal rights of the citizens are unnecessarily and in a manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend beyond the power of the state to pass, and they form no subject for federal interference.' *Giozza* v. *Tiernan*, 148 U. S. 657.

"Neither the constitution of the state nor the Fourteenth Amendment takes away the power of the state to enact a law that may fairly be said to protect the lives, liberty and property of its citizens, and to promote their health, morals, education and good order. 'If the state may compel the solvent bank to help pay losses sustained by depositors in insolvent banks, if it may enact workmen's compensation laws in order that the workman shall have no strained relations with his employer, nor become embittered towards society because, though an industry has crippled him, it has paid him nothing, if acts aiming to make better citizens by diminishing the chances of pauperism are sustained, if it is competent for the state to protect the minor from impoverishing himself by contract, it surely is not an arbitrary exercise of the functions of the state to insist' that the fundamental basis of the education of its citizens shall be the knowledge of the language, history and nature of government of the United States, *and to prohibit anything which may interfere with such education.* Laws,

the purpose of which are with respect to foreign language speaking children, to give them such training that they may know and understand their privileges, duties, powers and responsibilities as American citizens, which seek to prevent a foreign language from being used as the medium of instruction in other branches, and as the basis of their education are certainly conducive to the public welfare, and are not obnoxious to any provision of either the state or federal constitution."

In touching upon the need for this legislation the Supreme Court of Nebraska in the decision above quoted, at page 97, said:

"The operation of the selective draft law disclosed a condition in the body politic which theretofore had been appreciated to some extent, but the evil consequences of which had not been fully comprehended. It is a matter of general public information, of which the court is entitled to take judicial knowledge, that it was disclosed that thousands of men born in this country of foreign language speaking parents and educated in schools taught in a foreign language were unable to read, write or speak the language of their country, or understand words of command given in English. *It was also demonstrated that there were local foci of alien enemy sentiment, and that, where such instances occurred, the education given by private or parochial schools in that community was usually found to be that which had been given mainly in a foreign language.*

"The purpose of the new legislation was to remedy this very apparent need, and by amendment to the school laws make it compulsory that every child in the state should receive its fundamental and primary education in the English language."

It will be noted that this is not the argumentative language of zealous counsel, but is a judicial finding by the highest court of the state of actual conditions as existent in the commonwealth of Nebraska before the passage of this foreign language legislation.

In discussing the purpose of the legislation in the case below, the Supreme Court of Nebraska (*Meyer* v. *State,* 187 N. W. 100) (Printed record, Pg. 52) said:

> "The salutary purpose of the statute is clear. The legislature had seen the baneful effects of permitting foreigners, who had taken residence in this country to rear and educate their children in the language of their native land. The result of that condition was found to be inimical to our own safety. To allow the children of foreigners, who had emigrated here, to be taught from early childhood the language of the country of their parents was to rear them with that language as their mother tongue. It was to educate them so that they must always think in that language, and, as a consequence, naturally inculcate in them the ideas and sentiments foreign to the best interest of this country. The statute, therefore, was intended not only to require that the education of all children be conducted in the English language, but that until they had grown into that language and until it had become a part of them, they should not in the schools be taught any other language. The obvious purpose of this statute was that the English language should be and become the mother tongue of all children reared in this state. The enactment of such a statute comes reasonably within the police power of the state."

And in further discussing the new law (the Norval Act of 1921) the Supreme Court of Nebraska in the case of *Nebraska District of Evangelical Lutheran Synod* v. *McKelvie,* 187 N. W. 927, said:

> "The reasons found by the Legislature for this enactment, we believe are set out in our opinion in *Nebraska District of Evangelical Lutheran Synod* v. *McKelvie,* 104 Neb. 93 and *Meyer* v. *State.* The legislature intended that the English language should become the universal language of the state; that children of foreign parentage should be so reared and educated that English would come to be their natural language and the language which they would continue to use. Children of foreign parentage, first starting to school, are able to talk the

language of their parents. That language is at that time the one naturally favored by them. *The requirement that children who have not passed the eighth grade shall in language study apply themselves exclusively to the English language, so that English shall be mastered and become the more favored one, we are not ready to say is a measure more stringent than is warranted, nor that the Legislature has acted without reason and in a purely arbitrary manner. The law does not create an absolute prohibition against the learning of a foreign language. It only postpones and regulates that teaching. There is no curb on knowledge, such children have a sufficient task to master English in what time and opportunity is available to them for language study. When the child becomes sufficiently versed in English, which in the eyes of the law, is when he has passed the eighth grade, and has received the instruction in English which necessarily goes with that extent of education, when that language has become his language, then he is free to study whatsoever language he pleases. The statute was enacted in a jealous regard to further and assure the universal use of English, and as a means to that end, to curtail, so far as could reasonably be done, the rearing of children of foreign parentage in the language of their parents.* * * *

"It appears to us that the law is a reasonable exercise of the police power and is not unconstitutional, as in violation either of the state or of the Federal Constitution. In its operation it does not deprive any person of life, liberty or property without due process of law, nor does it deny the equal protection of the law. It does not interfere with religious liberty nor with the giving of religious instruction."

In sustaining the constitutionality of the Ohio foreign language act, which is substantially the same as that of Nebraska, the Supreme Court of Ohio in *Pohl* v. *State*, 102 Ohio State 474, said:

"While much consideration in arguments and briefs has been given to the wisdom of the provisions of Sections 7762-1 and 7762-2, General Code, this court is of the

opinion that such argument might better be addressed to the legislative branch of the government.

"Courts do not sit to review the wisdom of legislative acts, nor do they possess such power. On the contrary, the policy, the advisability, and the wisdom of all legislation, subject to the veto of the governor and the referendum of the people, are subjects for legislative determination exclusively. The inexpediency, injustice or impropriety of a legislative act are not grounds upon which the court may declare the act void. The remedy for such evils must be sought by an appeal to the justice and patriotism of the legislature itself. Except as limited by the Federal and State Constitutions, the power of the general assembly to legislate is inherent and unlimited and covers the whole range of legitimate legislation.

"If the general assembly in the exercise of its power to legislate enacts laws necessary for the welfare of society, and thereby makes unlawful conduct theretofore lawful, such legislation will not be held to be unconstitutional simply because it forbids the doing of things theretofore permitted. The 'enjoying and defending life and liberty * * * and seeking and obtaining happiness' do not contemplate that they shall be enjoyed, sought and obtained as they were enjoyed, sought and obtained by primitive man, but that they shall be enjoyed, sought and obtained with such regard to the rights of society as the common welfare, as defined by the legislature, requires. It is upon this theory that our system of government exists.

"The legislation in question is of equal application to every pupil of the state who has not completed a course of study equivalent to that prescribed in the first seven grades of the elementary schools regardless of nationality, ancestry, or place of birth, and is therefore, of equal operation upon every person within the designated grade.

"The constitutionality of the act under consideration is, therefore, dependent upon whether the common welfare requires such legislation. The legislature is presumed to have had before it such information with reference to the effect of the teaching of the German language

to the youth of the state below the eighth grade as justified it in concluding that the common welfare required the prohibition of such teaching to such youth, and if the legislature found such facts to exist as to warrant it in the enactment of the sections in question it is not within the province of a court to redetermine the existence or non-existence of such facts, even though the court might upon such redetermination reach a different conclusion. If under any possible state of facts the sections would be constitutional, this court is bound to presume that such facts exist.

"No principle is better established by the decisions of the federal and state courts than that the possession and enjoyment of all rights are subject to such reasonable regulations as are deemed by the legislative authority to be essential to the welfare of the state, and every intendment is to be made in favor of the validity and lawfullness of such regulations unless they are clearly unreasonable and violative of some express provision of the constitution.

"For these reasons we are unable to reach the conclusion that Sections 7762-1 and 7762-2 are unconstitutional, and the judgment of the court of appeals will, therefore, be affirmed."

The Supreme Court of Iowa in affirming the conviction of one Bartels who was convicted of the violation of the Iowa foreign language act by teaching reading in German in *State* v. *Bartels*, 191 Iowa 1060, said:

"The state has a right to adopt a general policy of its own respecting the health, social welfare and education of its citizens, and as long as it does no violation to constitutional inhibitions the citizen within its borders has no other alternative than to obey or remove to a more congenial environment. Iowa has not been backward in enacting legislation under these well recognized powers. Our public health statutes, providing for compulsory quarantine and similar regulations, have been upheld and enforced. A citizen may feel that he has a perfect right to determine for himself whether his child under 16 years of age shall be employed, and the hours

and conditions of such service, but, if so, he must acquire residence in some state which has no child labor law similar to ours. So, too, with many other statutes which have been enacted by our General Assembly, and are the settled policy of this state. To all such, the person, native-born or foreigner, who seeks residence within this commonwealth must subscribe. From the earliest days the settled policy of this state has been to foster, encourage and promote the education of its youth. Our great public school system and our state institutions of higher education are the outcome and result of this policy. No one will dispute the power and the right of the state to adopt and carry out such a beneficent policy. * * *

"The policy of the state has been a progressive one, but it has been consistent and in full keeping with its powers to do all these things for the better training and education of its youth for the full duties and responsibilities of American citizenship. *The advent of the great World War revealed a situation which must have appealed very strongly to the Legislature as justifying the enactment of this statute. Men called to the colors were found to be in some instances not sufficiently familiar with the English language to understand military commands or to read military orders. It was to meet this situation, to encourage the more complete assimilation of all foreigners into our American life, to expedite the full Americanization of all our citizens that the Legislature deemed this statute for the best interests of the state.*

"The manifest design of this language statute is to supplement the compulsory education law by requiring that the branches enumerated to be taught shall be taught in the English language and in no other. * * *

"The policy of the state is apparent, and the evil sought to be remedied is manifest. With the wisdom of the act of the Legislature in passing the statute in question as a means of meeting this situation and seeking to remedy the same we have no concern whatever. That question was wholly for the determination of the General Assembly. They adopted such means as to them seemed wise, appropriate and efficient. * * *

"From an early day it has been the rule of this court that a law will be declared to be unconstitutional only when it is 'clearly, plainly and palpably so.' * * *

"The statute in no manner whatsoever interferes with religious freedom. It is expressly limited to secular subjects. There is scarcely any secular subject taught in our schools that cannot fairly be said to be used in some way in connection with religious instruction or religious belief. It would be going to extreme lengths to say that the regulation of the teaching of such a subject was an interference with religious freedom, because it might be utilized in acquiring religious instruction in some way. Arithmetic, history, writing, geography, all are properly used in religious instruction to some degree. As bearing on this feature of the discussion, see *Owens* v. *State*, 6 Okla Cr. 110, 116 Pac. 345, 36 L. R. A. (N. S.) 633, Ann. Cas. 1913B, 1218; *Smith* v. *People*, 51 Colo. 270, 117 Pac. 612, 36 L. R. A. (N. S.) 158; *Reynolds* v. *U. S.*, 98 U. S. 145, 25 L. Ed. 244. * * *

"As we have observed, a known evil existed; it was within the power of the Legislature to seek to remedy it by the enactment of this statute. The defendant has a right to engage in the profession of teaching, but in so doing he is subject to such legislative enactments as may be fairly and reasonably said to be for the public welfare. We think this statute was a proper and reasonable exercise of the police power of the state in attempting to prevent an existing evil which the Legislature regarded as inimical to the public welfare. Such being the case, the defendant has not been denied any privileges guaranteed him by the Constitution."

The recognized general necessity for legislation similar to the Nebraska foreign language act, the recognition of the threatened menace and the proper remedy is shown by the fact that twenty-one states besides Nebraska have enacted similar foreign language laws. This Siman law is not a unique vagary of the Nebraska legislature.

For the convenience of the court, we have incorporated in this brief the legislation of twenty-one states:

CALIFORNIA—Section 1664, Political Code:

"All schools must be taught in the English language * * *"

COLORADO—Section 6010, Chapter, 179 of the 1919 Session Laws (Pg. 599):

"Instruction in the common branches of study in the public elementary schools of this state shall be conducted through the medium of the English language only, nor shall any other than the English language be taught as a separate and distinct branch of itself.

"During the time that the public schools of the district in which he is a resident are in session, no child of school age who has not completed the eighth grade shall be permitted to attend any school where the common branches are not taught in the English language."

DELAWARE—Section 11, Chapter 157, Laws of 1919 (Pg. 356) Rev. Code 2283:

"In every elementary school of and in the state there shall be taught at least reading * * * oral and written English * * English shall be the only language employed and taught in the first six grades of the elementary schools of and in the state, provided in case this provision is violated by individuals, private educational associations, corporations, or institutions, the state board of education shall take such legal action as will enjoin such violation."

INDIANA—Section 1, Chapter 18, Laws of 1919 (Pg. 50):

"That all subjects and branches taught in the elementary schools of the state of Indiana, and all elementary schools maintained in connection with benevolent or correctional institutions, shall be taught in the English language only, and the trustee * * * shall have taught in them * * * English grammar, * * * Provided, that the German language shall not be taught in any of the elementary schools of this state * * *."

"All private and parochial schools and all schools maintained in connection with benevolent and correctional institutions within this state which instruct pupils who have not completed a course of study equivalent to that prescribed for the first eight grades of the elementary schools of this state, shall be taught in the English language only, * * * Provided, that the German language shall not be taught in any such schools within this state."

KANSAS—Chapter 272, Laws of 1919, amending Section 9415, Gen. Stat. 1915:

"Every parent, guardian, or other person in the state of Kansas having control or charge of any child or children having reached the age of 8 years and under 16 years shall be required to send such child or children to a public school or a private, denominational or parochial school in which all instruction shall be given in the English language only, each school year, for such time as said school is in session."

Chapter 257, Laws of 1919 (Pg. 352):

"All elementary schools in this state, whether public, private or parochial, shall use the English language exclusively as the medium of instruction."

LOUISIANA—Section 1, Act 114, Laws of 1918 (Pg. 188):

"It shall be unlawful for any teacher, professor, lecturer, person or persons employed in the public, private, elementary or high schools, colleges, universities, or other institutions, in the state of Louisiana that in any way form part of the public or private educational system or educational work in the state of Louisiana, to teach the German language to any pupils or class."

Section 1, Act. 177, Laws of 1918 (Pg. 332):

"That any and all persons, firms, partnerships, corporations, and associations or organizations of any and every form and character, all and singular, directly and indirectly, be and are hereby prohibited in this state from * * *; and likewise prohibiting the use or display

of any sign, insignia, name, designation, title, phrase, circular, or other form of advertising or description, written, printed, or appearing in the German language or that of any nation allied with Germany, or derived from such language, whether same refers to any article or thing of German origin or not; and likewise prohibiting the sale, exchange, the giving away, distribution, delivering, or in any manner conveying to another or others, or offering or contracting to sell or otherwise dispose of, or to exhibit or display for sale or any other purpose, any book, paper, magazine, or other publication, written or printed or appearing in the German language or the language of any ally of Germany * * *."

MINNESOTA—Section 1, Chapter 320, Session Laws of 1919 (Pg. 337):

"Every child between eight and sixteen years of age shall attend a public school, or a private school, in each year during the entire time the public schools in the district in which the child resides are in session; provided, however, that no child shall be required to attend public school more than ten (10) months during any calendar year. In districts maintaining terms of unequal length in different public schools, this requirement shall be satisfied by attendance during the shorter term.

"A school, to satisfy the requirements of compulsory attendance, must be one in which all the common branches are taught in the English language, from textbooks written in the English language and taught by teachers qualified to teach in the English language. A foreign language may be taught when such language is an elective or a prescribed subject of the curriculum, but not to exceed one hour in each day."

MONTANA—Section 912, 1 Revised Codes 1917:

"All schools shall be taught in the English language * * *."

NORTH DAKOTA—Chapter 41, Laws of 1918:

"All instruction (in public and private schools) shall be given only and entirely in the English language. It

shall be unlawful to teach any subject, except foreign and ancient languages, in any high school, academy, college, or higher institution of learning in this state, or in any private school, academy, college, or institution of higher learning, except foreign and ancient languages and religious subjects, in any but the English language."

OKLAHOMA—Section 1, Chap. 141, Laws of 1919 (Pg. 201):

"That the English language is hereby declared to be the language of the people of the state of Oklahoma. And it shall be unlawful to teach or instruct in any other language in any public, parochial, denominational, or private school or other institution of learning within the state of Oklahoma, except pupils receiving such instruc tion shall have completed the eight grades of the common school curriculum as designated by the state board of education.

"Sec. 2. All textbooks used in the first eight grades of all said schools shall be printed in the English language. (Penalty, fine, jail.)

SOUTH CAROLINA—Section 5, Chap. 135, Session Laws of 1919 (Pg. 206):

"That any private or parochial school attended by any child between eight and fourteen years of age shall be first approved by the State Board of Education. Such school must give its instruction in the English language, and it must teach such subjects as are required in a similar public school in South Carolina."

SOUTH DAKOTA—Section 1, Chap. 41, Laws of 1918:

"Every person having under his control a child of the age of 8 years and not exceeding the age of 16 years shall annually cause such child to regularly attend some public school, or private day school, for the entire annual term in each year during which the public school in the district in which such person resides is in session, until such child shall have completed the first eight grades of the regular common school course; * * * Provided,

further, that all such instruction shall be given only and entirely in the English language."

OHIO—1919 session of the legislature passed the following act:

"Sec. 7762-1. That all subjects and branches taught in the elementary schools of the state of Ohio below the eighth grade shall be taught in the English language only. The board of education, trustees, directors and such other officers as may be in control, shall cause to be taught in the elementary schools all branches named in Section 7648 of the General Code. Provided, that the German language shall not be taught below the eighth grade in any of the elementary schools of this state.

"Sec. 7762-2. All private and parochial schools and all schools maintained in connection with benevolent and correctional institutions within this state which instruct pupils who have not completed a course of study equivalent to that prescribed for the first seven grades of the elementary schools of this state, shall be taught in the English language only, and the person or persons, trustees or officers in control shall cause to be taught in them such branches of learning as prescribed in Section 7648 of the General Code or such as the advancement of pupils may require, and the persons or officers in control direct provided that the German language shall not be taught below the eighth grade in any such schools within this state."

"Sec. 7762-3. Any person or persons violating the provisions of this act shall be guilty of a misdemeanor and shall be fined in any sum not less than twenty-five dollars nor more than one hundred dollars, and each separate day in which such act shall be violated shall constitute a separate offense.

"Sec. 7762-4. In case any section or sections of this act shall be held to be unconstitutional by the Supreme Court of Ohio such decision shall not affect the validity of the remaining section."

IOWA—38th General Assembly passed the following act:

> "Section 2263—Compiled Code of Iowa.
> "The medium of instruction in all secular subjects taught in all of the schools, public and private, within the state of Iowa, shall be the English language, and the use of any language other than English in secular subjects in said schools is hereby prohibited; provided, however, that nothing herein shall prohibit the teaching and studying of foreign languages as such as a part of the regular school course in any such school, in all courses above the eighth grade."

WASHINGTON—Section 4889 of the 1919 General Statutes:

> "All common schools shall be taught in the English language * * *."

Other states having similar laws are:

IDAHO—Page 492 of the 1919 Session Laws.

ILLINOIS—Page 917, 1919 Session Laws.

MASSACHUSETTS—Page 478, Revised Laws of 1902.

NEVADA—Page 247, 1919 Session Laws.

OREGON—Page 34, 1919 Session Laws.

WEST VIRGINIA—Chapter 2, 1919 Session Laws.

In no state has this foreign language legislation been successfully attacked. Three attempts only have been made, in Ohio, Iowa and Nebraska. In every adjudicated case the legislation has been upheld and sustained as against all constitutional objections.

The following principles and their application in respect to the police power may be gleaned from recent decisions of the Supreme Court of the United States. It will be noted that the latter decisions extend the police power to many occupations and situations to which the earlier decisions did not.

The police power itself is an attribute of sovereignty. It exists without any reservation in the Constitution. It is founded on the right of the state to protect its citizens, to provide for their welfare and progress and to insure the good of society. It corresponds to the right of self preservation in the individual. Its application varies with the exigencies of the situation and with the progress of mankind. It is the foundation of our social system and upon it depends the security of social order, the life and health of the citizen, the comfort of existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property. It extends to the protection of life, health, comfort and welfare of persons and also to property, and to the welfare of the state itself. All natural persons within the jurisdiction hold their property and pursue their various callings subject to the police power. It is inherent in the various states of the Union, as well as in the Federal government. To the extent that property or business is devoted to public use or is affected with a public interest it is subject to regulation by the police power. It extends to regulation of education as the very existence of our government, as well as its progress and development, depends upon the intelligence of our citizenry.

In the case of *McLean* v. *Arkansas*, 211 U. S. 539, the Supreme Court of the United States, in upholding a statute of Arkansas providing that in coal mines the miners' output must be weighed before it was screened as against the objection that it was not a proper exercise of the police power and that it was an unjust discrimination against persons engaged in the mining industry, the court said:

> "But in many cases in this court the right of freedom of contract has been held not to be unlimited in its nature, and when the right to contract or carry on business conflicts with laws declaring the public policy of the state, enacted for the protection of the public health, safety or welfare, the same may be valid, notwithstanding they have the effect to curtail or limit the freedom of contract.

"It is then the established doctrine of this court that liberty of contract is not universal, and is subject to restrictions passed by the legislative branch of the Government in the exercise of its power to protect the safety, health and welfare of the people. * * *

"The legislature being familiar with local conditions is, primarily, the judge of the necessity of such enactments. The mere fact that a court may differ with the legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the act in question is unmistakably and palpably in excess of legislative power. *Jacobson* v. *Massachusetts*, 197 U. S. 11; *Mugler* v. *Kansas*, 123 U. S. 623; *Minnesota* v. *Barber*, 136 U. S. 313, 320; *Atkin* v. *Kansas*, 191 U. S. 207."

In *Muller* v. *Oregon*, 208 U. S. 412, a noteworthy case in which Justice Brandeis was counsel, a statute of Oregon limiting the hours of labor of female employees in certain industries was upheld as within the Fourteenth Amendment to the Constitution of the United States, on the ground that the physical structure and maternal functions of woman placed her at an industrial disadvantage, and as healthy mothers were deemed essential to the production of vigorous offspring, the physical well-being of women became an object of public interest and care. In order to preserve the strength and vigor of the race her hours of labor could be limited by the legislature. It was within the province of the state to protect her from the greed of an employer as well as from promiscuous lust.

In *Holden* v. *Hardy*, 169 U. S. 366, an eight-hour labor law applying to the mining industry was held constitutional. In *Jacobson* v. *Massachusetts*, 197 U. S. 11, a law requiring vaccination against smallpox was upheld. In *Atkin* v. *Kansas*, 191 U. S. 207, a statute of Kansas prescribing the maximum day of labor at eight hours for those employed on public works, was upheld.

In *Murphy* v. *California,* 225 U. S. 623, this court upheld as within the police power an ordinance of a California municipality which prohibited the maintenance of billard rooms within municipal limits except in connection with hotels. It was said that the Fourteenth Amendment to the Federal Constitution was never intended to protect billiard-hall proprietors in their occupation as against the exercise of the police power of the city, the language of the court being:

> "The Fourteenth Amendment protects the citizen in his right to engage in any lawful business, but does not prevent legislation intended to regulate useful occupations, which because of their nature and location, may prove injurious or offensive to the public."

The court in short order and with a mere statement that there was no merit therein disposed of the contention that the ordinance amounted to a denial of equal protection of the law because it permitted hotels to retain billiard tables.

In *Booth* v. *Illinois,* 184 U. S. 425, an Illinois statute against dealing in grain futures was upheld on the theory that courts had nothing to do with the policy of legislation. The rule as to the protection provided by the Fourteenth Amendment to the Federal Constitution was stated as follows:

> "If, looking at all the circumstances that attend, or which may ordinarily attend, the pursuit of a particular calling, the State thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the substance of the matter, they can say that the statute enacted professedly to protect the public morals has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law. *Mugler* v. *Kansas,* 123 U. S. 623; *Minnesota* v. *Barber,* 136 U. S. 313, 320; *Brimmer* v. *Rebman,* 138 U. S. 78; *Voight* v. *Wright,* 141 U. S. 62."

In the *Second Employers' Liability Cases,* 223 U. S. 1, this court held that congress, by virtue of its constitutional power

to regulate interstate commerce, could enact a transportation employees' liability act providing compensation to all injured in the course of employment without regard to the negligence of the employer or a fellow servant and thus could change existing rules regarding liability for injuries and freedom of contract, and could thus supersede existing state legislation on these subjects.

In *Noble State Bank* v. *Haskell*, 219 U. S. 104, in upholding the constitutionality of a state bank guaranty law, the court said in respect to the alleged conflict between the police power and the guaranty act:

> "In answering that question we must be cautious about pressing the broad words of the Fourteenth Amendment to a drily logical extreme. Many laws which it would be vain to ask the court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guarantees in the Bill of Rights. They more or less limit the liberty of the individual or they diminish property to a certain extent. We have few scientifically certain criteria of legislation, and as it often is difficult to mark the line where what is called the police power of the states is limited by the Constitution of the United States, judges should be slow to read into the latter a *nolumus mutare* as against the law-making power.
>
> "The substance of the plaintiff's argument is that the assessment takes private property for private use without compensation. And while we should assume that the plaintiff would retain a reversionary interest in its contribution to the fund so as to be entitled to a return of what remained of it if the purpose were given up (see *Receiver of Danby* v. *State Treasurer*, 3 Vt. 92, 98), still there is no denying that by this law a portion of its property might be taken without return to pay debts of a failing rival in business. Nevertheless, notwithstanding the logical form of the objection, there are more powerful considerations on the other side. In the first place it is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what, in its imme-

diate purpose, is a private use. *Clark* v. *Nash,* 198 U. S. 361; *Strickley* v. *Highland Boy Mining Co.,* 200 U. S. 527, 531; *Offield* v. *New York, New Haven & Hartford R. R. Co.,* 203 U. S. 372; *Bacon* v. *Walker,* 204 U. S. 311, 315.

"It may be said in a general way that the police power extends to all the great public needs. *Canfield* v. *United States,* 167 U. S. 518. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare. Among matters of that sort probably few would doubt that both usage and preponderant opinion give their sanction to enforcing the primary conditions of successful commerce. One of these conditions at the present time is the possibility of payment of checks drawn against bank deposits, to such an extent do checks replace currency in daily business. If then the legislature of the state thinks that the public welfare requires the measure under consideration, analogy and principle are in favor of the power to enact it.

"The question that we have decided is not much helped by the propounding the further one, whether the right to engage in banking is or can be made a franchise. But as the latter question has some bearing on the former and as it will have to be considered in the following cases, if not here, we will dispose of it now. It is not answered by citing authorities for the existence of the right at common law. There are many things that a man might do at common law that the States may forbid. He might embezzle until a statute cut down his liberty. We cannot say that the public interests to which we have adverted, and others, are not sufficient to warrant the state in taking the whole business of banking under its control. On the contrary we are of opinion that it may go on from regulation to prohibition except upon such conditions as it may prescribe. In short, when the Oklahoma legislature declares by implication that free banking is a public danger, and that incorporation, inspection and the above described co-operation are necessary safeguards, this court certainly cannot say that it is wrong. *North Dakota* v. *Woodmansee,* 1 N. Dak. 246;

Brady v. *Mattern*, 125 Iowa 158; *Weed* v. *Bergh*, 141 Wis. 569; *Commonwealth* v. *Vrooman*, 164 Pa. 306; *Myers* v. *Irwin*, 2 S. & R. 368; *Myers* v. *Manhattan Bank*, 20 Ohio 283, 302; *Attorney General* v. *Utica Insurance Co.*, 2 Johns. Ch. 371, 377."

In denying a motion for a rehearing in this case, *Noble State Bank* v. *Haskell*, 219 U. S. 575, the court said:

> "We fully understand the practical importance of the question and a very powerful argument that can be made against the wisdom of the legislature, *but on that point we have nothing to say as it is not our concern.*"

In *Arizona Employers' Liability Cases*, 250 U. S. 400, this court upheld the Arizona employers' liability law as police regulation, as against the constitutional objections that it contravened the Fourteenth Amendment, deprived an employer of his property without due process of law, denied him equal protection of the law and interfered with the workman's constitutional rights of life, liberty and property.

In *Gilbert* v. *Minnesota*, 254 U. S. 325, this court upheld a statute of the state of Minnesota, making it a misdemeanor to discourage military service by public speech as within the police power of the state and as not transgressing the constitutional liberty of free speech, and in respect to the argument that defendant had a constitutional right to freedom of speech, said that it would be a travesty on the constitutional privilege he invokes to assign him its protection under the circumstances of this case.

In the Adamson law cases, *Wilson* v. *New*, 243 U. S. 332, the constitutionality of the Adamson Law fixing eight hours as a standard day for railway trainmen for the basis of pay, except on electric roads and on roads less than one hundred miles long, was upheld by this court as against the objections that:

(1) Congress had no power to legislate as to wages in transportation industries.

(2) That there was illegal discrimination in exempting roads operated by electricity, and short line railroads from the provisions of the act.

(3) That the eight-hour day regulation as a basis of pay was arbitrary.

The court held that the legislation was reasonable and desirable in the face of the emergency presented by the threat of a general strike.

Certainly, if the hours of labor in the mining industry can be regulated; if congress may fix an eight-hour day as a basis of pay in transportation industries; if it can compel solvent banks to pay the losses occasioned by the operation of insolvent banks; if it can forbid the keeping of billiard tables within the municipal limits; if it can compel universal vaccination against smallpox; if it can legislate concerning the hours a man or woman is permitted to work, surely the police power is ample to permit a state to so regulate the education of its children that they may speak the language of the country and that the citizenry of the state may be therefore improved. The Legislature of Nebraska should not be handicapped in its reasonable effort to prohibit a menace not only to the public welfare but to the safety of the state itself.

In the recent case of *Block* v. *Hirsh*, 256 U. S. 135, a rent law giving the tenant the right to occupy any hotel, apartment, or rental property, notwithstanding the expiration of his lease, so long as he paid the rent originally prescribed in the lease, was upheld by this court in the following language:

> "These cases are enough to establish that a public exigency will justify the legislature in restricting property rights in land to a certain extent without compensation. But if, to answer one need, the legislature may limit height, to another it may limit rent. We do not perceive any reason for denying the justification held good in the foregoing cases to a law limiting the property rights now in question if the public exigency requires

that. The reasons are of a different nature, but they certainly are not less pressing. Congress has stated the unquestionable embarrassment of government and danger to the public health in the existing condition of things. The space in Washington is necessarily monopolized in comparatively few hands, and letting portions of it is as much a business as any other. Housing is a necessary of life. All the elements of a public interest justifying some degree of public control are present."

The quotation on page sixteen of the brief of defendant, from *State* v. *Sperry*, 94 Neb. 785, holding that it is not within the police power of the state to prohibit the giving of trading stamps inasmuch as the legislature may not under the guise of protecting public interest arbitrarily interfere with private business, is particularly inapt in view of the decisions of this court. In the *Matter of Gregory*, 219 U. S. 216; *Rast* v. *Van Deman*, 240 U. S. 342; *Pitney* v. *State of Washington*, 240 U. S. 387, *and Tanner* v. *Little*, 240 U. S. 369, this court held that trading stamp enterprises are not within the protection of the Fourteenth Amendment and may be prohibited by the different states under their police power because the character of such enterprises may be deemed inimical to public welfare being of a somewhat similar nature to lotteries. In dealing with the questions the court said in the *Tanner case*, 240 U. S. 369:

> "Our present duty is to pass on the statute before us, and if it has been enacted upon a belief of evils that is not arbitrary we cannot measure their extent against the estimate of the legislature. *McLean* v. *Arkansas*, 211 U. S. 539. Such belief has many examples in state legislation and, we have seen, it has persisted against adverse judicial opinion. If it may be said to be a judgment from experience as against a judgment from speculation, certainly, from its generality it cannot be declared to be made in mere wantonness. *Central Lumber Co.* v. *South Dakota*, 226 U. S. 157, 160; *Purity Extract Co.* v. *Lynch*, 226 U. S. 192, 204-205."

In view of this quotation this court will bear in mind the legislative enactments of twenty-one states in respect to for-

eign language legislation set forth on pages 24 to 29 of this brief.

In his quotation from the New York Independent, on page 17 of his brief, depicting the outraged feelings of the inhabitants of Alsace-Lorraine when German was forced upon them, and of the Poles when their language was prohibited in their own country, the defendant fails to appreciate the distinction between requiring those who seek asylum in America to use the language of the country and in attempting to impose a language by force of arms upon a conquered people in their own country. Of course, the latter is tyrannical just as the former is merely self protection.

III.

The Nebraska Statute does not unlawfully interfere with the defendant Meyer's occupation as a teacher.

It is urged that the right to pursue a legitimate vocation is within the rights guaranteed by the Fourteenth Amendment, that the teaching of German is a legitimate occupation and is likewise guaranteed (brief of plaintiff in error, pp. 7-9).

The liberty guaranteed to the individual by the Fourteenth Amendment is not the liberty enjoyed by primitive man. Personal liberty in the present stage of civilization is necessarily often subordinated to the public good. Doubtless defendant's occupation as a foreign language teacher is somewhat interfered with. The enactment of prohibitory legislation seriously handicapped many bar-tenders. Until the passage of regulatory statutes making it unlawful one could legally sell cigarettes to minors. Before the enactment of forgery statutes one could alter bank paper at his pleasure. But these rights were not guaranteed to the individual in perpetuity. With the enactment of the prohibition laws we all lost our right to transport and vend intoxicants. Prohibition laws do not violate the Fourteenth Amendment because they affect the property value of a brewery. *Mugler* v. *Kansas*, 123 U. S. 623. Regulatory legislation, upheld by our

courts has made all these things criminal. At one time the receipt of rebates led to the establishment of the greatest fortune in America, now their acceptance would lead to the penitentiary. One has no inalienable right to sell liquor or tobacco, receive rebates, run an automobile at high speed or carry a pistol. As society progresses and sets a higher standard many acts become unlawful which were previously legitimate. Defendant Meyer's occupation of a foreign language teacher was and still is a legitimate one. His method of livelihood is not seriously impaired by the Nebraska legislation. In the future he is confined in the exercise of his talents to children who have passed the eighth grade, just as tobacco dealers must confine their sales to persons who have attained their majority.

Prior to the female labor acts a woman could work as many hours as she desired, to the detriment of her health, but it has been held that a curtailment of her liberty to work was not a violation of the Fourteenth Amendment.

Wenham v. *State*, 65 Neb. 395.

Muller v. *Oregon*, 208 U. S. 412.

Ordinarily, conducting a laundry is a legitimate occupation, but the prohibition of laundry work within certain territorial limits in San Francisco between 10 A. M. and 6 P. M. was construed to be a police regulation not prohibited by the Fourteenth Amendment.

Barbier v. *Connolly*, 113 U. S. 27.

This case is so instructive on the question of discrimination that we set forth the following excerpts from it:

> "The Fourteenth Amendment, in declaring that no state 'shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances

in the enjoyment of their personal and civil rights, that all persons should be entitled to pursue their happiness and acquire and enjoy property, that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts, that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances, that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses. But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the state, develop its resources and add to its wealth and prosperity. From the very necessities of society, legislation of a special character, having these objects in view, must often be had in certain districts, such as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits—for supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed not to impose unequal or unnecessary restrictions upon any one, but to promote, with as little individual inconvenience as possible, the general good. Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."

The right to choose or pursue a legitimate vocation is within the constitutional guarantee but the state has power within reasonable limits to determine what is and what is not a legitimate occupation and to determine when the same can be carried on.

Even as far back as the *Slaughter House Cases*, 16 Wall. 36, this court has held that while the butchering of animals was a legitimate occupation, yet the city of New Orleans under its police power could restrict the slaughtering of animals to certain buildings and places within the city limits. If the slaughtering of animals is so affected by the public interest as to permit its regulation by municipal authority, surely the early education of the citizens of a state is also sufficiently fraught with public interest to permit its regulation by the state in its own interest and for its own protection. It may be noted that the quotation from the slaughter house cases on page 8 of the brief of the plaintiff in error was from the dissenting opinion in that case and not from the judgment of the court, as was also the quotation from Mr. Justice Harlan in *Berea College* v. *Kentucky*, 211 U. S. 45; the actual holding in the Berea College case being that a statute prohibiting instructions to whites and negroes in the same incorporated school was not invalid.

The sweeping language used in *Allgeyer* v. *Louisiana*, 165 U. S. 578, and in *Adair* v. *United States*, 208 U. S. 161, quoted on pages 8 and 12 of defendant's brief, was modified and restricted by this court in *Chicago, Burlington & Quincy R. R. Co.* v. *McGuire*, 219 U. S. 549.

The McGuire case involved the validity of an Iowa statute granting a right of action to injured railway employees regardless of whether they had released the carrier from liability by contributing to or accepting the benefits of the carrier's relief insurance scheme.

In upholding the constitutionality of this statute as against the objection that it was against public policy, and that it interfered with the constitutional freedom of contract, and

after expressly referring to *Allgeyer* v. *La.*, 165 U. S. 578, and *Adair* v. *U. S.*, 208 U. S. 161, and in restricting the language used in those opinions, this court stated the principle in language that cannot be improved for logic and clarity of statement as follows:

> "But it was recognized in the cases cited, as in many others, that freedom of contract is a qualified and not an absolute right. There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interest of the community. *Crowley* v. *Christensen*, 137 U. S. p. 89; *Jacobson* v. *Massachusetts*, 197 U. S. p. 11. 'It is within the undoubted power of government to restrain some individuals from some contracts. It may deny to all the right to contract for the purchase or sale of lottery tickets; to the minor the right to assume any obligations, except for the necessaries of existence; to the common carrier the power to make any contract releasing himself from negligence, and, indeed, may restrain all engaged in any employment from any contract in the course of that employment which is against public policy. The possession of this power by government in no manner conflicts with the proposition that, generally speaking, every citizen has a right freely to contract for the price of his labor, services or property.' *Frisbie* v. *United States*, 157 U. S. pp. 165, 166.
>
> "It it subject also, in the field of state action, to the essential authority of government to maintain peace and security, and to enact laws for the promotion of the health, safety, morals and welfare of those subject to its jurisdiction. This limitation has had abundant illustration in a variety of circumstances. Thus, in addition to upholding the power of the state to require reasonable maximum charges for public service (*Munn* v. *Illinois*, 94 U. S. 113; *C. B. & Q. R. R. Co.* v. *Iowa*, 94 U. S. 155; *Railroad Commission Cases*, 116 U. S. 307; *Wilcox* v. *Consolidated Gas Co.*, 212 U. S. 19), and to prescribe

the hours of labor for those employed by the state or its municipalities. (*Atkin* v. *Kansas,* 191 U. S. 207), This court has sustained the validity of state legislation in prohibiting the manufacture and sale of intoxicating liquors within the state (*Mugler* v. *Kansas,* 123 U. S. 623; *Crowley* v. *Christensen, supra*); in limiting employment in underground mines or workings, and in smelters and other institutions for the reduction or refining of ores or metals, to eight hours a day except in cases of emergency (*Holden* v. *Hardy,* 169 U. S. 366); in prohibiting the sale of cigarettes without license (*Gundling* v. *Chicago,* 177 U. S. 183); in requiring the redemption in cash of store orders or other evidence of indebtedness issued in payment of wages (*Knoxville Iron Co.* v. *Harbison,* 183 U. S. 13); in prohibiting contracts for options to sell or buy grain or other commodity at a future time (*Booth* v. *Illinois,* 184 U. S. 425); in prohibiting the employment of women in laundries more than ten hours a day (*Muller* v. *Oregon,* 208 U. S. 412); and in making it unlawful to contract to pay miners employed at quantity rates upon the basis of screened coal, instead of the weight of the coal as originally produced in the mine (*McLean* v. *Arkansas,* 211 U. S. 539).

"The principle involved in these decisions is that where the legislative action is arbitrary and has no reasonable relation to a purpose which it is competent for government to effect, the legislature transcends the limits of its power in interfering with liberty of contract; but where there is reasonable relation to an object within the governmental authority, the exercise of the legislative discretion is not subject to judicial review. The scope of judicial inquiry in deciding the question of power is not to be confused with the scope of legislative considerations in dealing with the matter of policy. Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance.

"The principle was thus stated in *McLean* v. *Arkansas*, 211 U. S. 547, 548: 'The legislature being familiar with local conditions, is primarily, the judge of the necessity of such enactments. The mere fact that a court may differ with the legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the act in question is unmistakably and palpably in excess of legislative power. (Cases cited.) * * * *If there existed a condition of affairs concerning which the legislature of the State, exercising its conceded right to enact laws for the protection of the health, safety or welfare of the people, might pass the law, it must be sustained;* if such action was arbitrary interference with the right to contract or carry on business, and having no just relation to the protection of the public within the scope of legislative power, the act must fail."

The case holds that in dealing with the relation of employer and employee, that the state legislature necessarily had a wide field of discretion in order to protect the health and safety of workmen, to promote peace and good order, and to insure wholesome conditions of work and freedom from oppression and that the granting of a right of action to injured employees regardless of whether or not they had involved themselves in the carrier's "relief plan" was within the reasonable discretion of the Iowa legislature and was not contrary to the federal constitution.

Surely if the state may legislate to protect its workmen, it may also legislate in respect to the education of the children in such a way as to insure a high standard of citizenry and a more intelligent basis and foundation for the state government.

IV.

The Nebraska Foreign Language Statute (Siman Law) does not deny defendant the equal protection of the law.

It is urged as a technical and perhaps a theoretical objection to the Nebraska law that it permits private tutors to

nstruct children in foreign languages while it prohibits such nstruction in schools of children who have not passed the ighth grade and have not previously mastered English.

The Supreme Court of Nebraska, in *Nebraska District Evangelical Lutheran Synod* v. *McKelvie, the Governor,* 187 N. W. 927, disposes of this objection in a practical as well as a sound manner in the following language:

> "It is claimed that the law is discriminative. It applies, however, to all schools generally. It covers all of the schools, where, it is well known, children now receive their education. It operates equally upon all children who have not had an eighth grade education and a knowledge of English which will be consequent therefrom. *Private instruction by a hired tutor, whether within or without the scope of the law, is instruction which is negligible in its extent.* In either event, the law operates in that matter without discrimination. The use and resulting knowledge of a foreign language in the home is not restricted, nor is instruction there prohibited. The exception of Sabbath schools from the law has been placed there with the evident purpose of preventing interference with religious exercises. It is not essential to the validity of the law that it should be a complete and absolute prohibition against the teaching of foreign languages. It was not intended to be such. The law is a regulation of such teaching, and not a prohibition. The qualifications made are not without reasonable basis, and cannot be said to be purely arbitrary."

The condition for which remedy was sought by the Nebraska legislation arose from the teaching of foreign languages to young children in parochial schools before such children had mastered English. The result of teaching German as the mother tongue to a lad born in America proved to be bad. The legislature guarded against it in the statute which it enacted under the police power. The fact that it did not declare the teaching of foreign languages by tutors or parents unlawful does not constitute an unreasonable, unlawful classification.

The Supreme Court of the United States in many cases has held that a legislature was vested with considerable discretion in classifying occupations to which regulatory legislation could be applied.

In *Miller* v. *Wilson,* 236 U. S. 373, the following language was used by Mr. Justice Hughes in passing upon alleged discrimination in female labor legislation:

> "We are thus brought to the objections to the act which are urged upon the ground of unreasonable discrimination. These are (1) the exception of women employed in 'harvesting, curing, canning or drying of any variety of perishable fruit or vegetable,' (2) the omission of those employed in boarding houses, lodging houses, etc., (3) the omission of several classes of women employes, as for example stenographers, clerks and assistants employed by the professional classes, and domestic servants, and (4) that the classification is based on the nature of the employer's business and not upon the character of the employe's work.
>
> "With respect to the last of these objections, it is sufficient to say that the character of the work may largely depend upon the nature and incidents of the business in connection with which the work is done. The legislature is not debarred from classifying according to general conditions; otherwise, there could be no legislative power to classify. *For it is always possibble by analysis to discover inequalities as to some persons or things embraced within any specified class.* A classification based simply on a general description of work would almost certainly bring within the class a host of individual instances exhibiting very wide differences; it is impossible to deny to the legislature the authority to take account of these differences and to do this according to practical groupings in which, while certain individual distinctions may still exist, the group selected will as a whole fairly present a class in itself. Frequently such groupings may be made with respect to the general nature of the business in which the work is performed; and, where a distinction based on the nature of the business is not an unreasonable one considered in its general

application, the classification is not to be condemned. (See *Louisville & Nashville R. R.* v. *Melton,* 218 U. S. 36, 53, 54.) * * * The contention as to the various omissions which are noted in the objections here urged ignores the well-established principle that the legislature is not bound, in order to support the constitutional validity of its regulations, to extend it to all cases which it might possibly reach. *Dealing with practical exigencies, the legislature may be guided by experience. Patzone* v. *Pennsylvania,* 232 U. S. 138, 144. It is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest. As has been said, it may 'proceed cautiously, step by step,' and 'if an evil is specially experienced in a particular branch of business' it is not necessary that the prohibition 'should be couched in all-embracing terms.' *Caroll* v. *Greenwich Insurance Co.,* 199 U. S. 401, 411. If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied. *Keokee Coke Co.* v. *Taylor,* 234 U. S. 224, 227."

In *Lindsey* v. *Natural Carbonic Gas Co.,* 220 U. S. 61, the court said:

"The rules by which this contention must be tested, as is shown by repeated decisions of this court, are these:

"1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.

"2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.

"3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

> "4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. *Batchel* v. *Wilson,* 204 U. S. 36, and other cases."

See *Johnston* v. *Kennecott Copper Corp.,* 248 Fed. 407, (Circuit Court of Appeals, Ninth Circuit) upholding legislation in respect to mining concerns employing five or more persons as against the charge that this was unlawful discrimination and classification.

De minimis non curat lex. Instruction by private tutors in Nebraska was too inconsequential for the legislature to concern itself with.

In *Halter* v. *Nebraska,* 205 U. S. 34, Nebraska legislation prohibited the printing of any advertisement upon the American flag and the use of the flag as an advertising medium was sustained. Many excellent expressions illustrative of the police power are used in the decision. One of the arguments against the validity of the legislation was that the statute expressly permitted the use of the flag on magazines. The court disposed of this objection in a summary manner, holding there was no illegal discrimination and no unlawful classification and that the exemption of magazines from the general prohibition against promiscuous use of the flag for advertising purposes rested upon reasonable grounds.

In *Quong Wong* v. *Kirkendall,* 223 U. S. 59, a law imposing a tax on hand laundries not employing women was upheld as against the argument that it was intended as an unlawful discrimination against Chinese laundries.

In discussing the legislative power of the state this court said at page 62:

> "It may make discriminations, if founded on distinctions that we cannot pronounce unreasonable and purely arbitrary, as was illustrated in *American Sugar Refining Co.* v. *Louisiana,* 179 U. S. 89; *Williams* v. *Fears,* 179

U. S. 270; *W. W. Cargill Co.* v. *Minnesota,* 180 U. S. 452, 469. * * * The criminal law is a whole body of policy on which states may and do differ."

And the case further held that a state may carry out a policy with the wisdom of which this court may disagree.

Other cases holding that a state may exercise reasonable discretion in classifying occupations which are regulated or prohibited, are

Wilson v. *New,* 243 U. S. 332.
Pitney v. *Washington,* 240 U. S. 387.
Tanner v. *Little,* 240 U. S. 369.
McLean v. *Arkansas,* 211 U. S. 539.
Lower Vein Coal Co. v. *Industrial Board of Indiana,* 255 U. S. 144.

CONCLUSION.

The evidence shows that this defendant Meyer never attempted to comply with the spirit of the Nebraska foreign language law, but like a moth with the candle, flitted as near as he thought he could without getting burned. The court left to the jury the question of whether or not the shortening of school hours and the extension of the noon recess from 1 o'clock to 1:30 in the afternoon to permit instruction in German was a subterfuge to evade the penalty of the law for teaching German to immature children. By its verdict the jury declared it was. This finding of fact will not be overturned in this court. The jury were justified in believing that the shortening of the school hours, the lengthening of the recess from 1 to 1:30, and the teaching of German in the period from 1 to 1:30, was a subterfuge to evade the law. The school hours remained practically the same, the half-hour previously devoted to the legitimate work of the school was taken out and devoted to instruction in German. Such action is both humorous and exasperating. Had the Supreme Court of Nebraska reversed this conviction there would be no legal obstacle to recesses of two and three hours

during regular school hours devoted to instruction in Germa
The whole purpose and intent of the foreign language la
would thus be nullified.

Perhaps we have given this case more attention than i
merits, as the only amount involved is a twenty-five dolla
fine. Yet we feel this language legislation is so importan
at least to the state of Nebraska, that we desire by all legiti
mate arguments, to protect the Siman law from adverse judi
cial comment, even though the Siman law itself has bee
repealed.

This defendant Meyer has attempted to evade a crimina
statute by subterfuge. He should be taught that our law
are to be obeyed and that one who seeks to evade them doe
so at his peril.

The Nebraska foreign language legislation cannot justly b
criticized as arbitrary or strong-arm Americanization. Th
war is over and our martial feelings have subsided, yet w
should not forget the lessons we learned when the safety
of the nation hung in the balance. That conflict taught u
that we must have a united people, united in ideals, languag
and patriotism. This statute is not an unreasonable or arbi
trary restraint on anybody. It is only considered so by a few
citizens of German descent. It is simply the exercise by th
state of the right of the state to so supervise the educatio
of its youth that in Nebraska at least the language of th
country shall be the language of the heart.

Respectfully submitted,

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Attorney for State of Nebraska, Defendant in Error

MASON WHEELER, Asst. Atty. General of Nebraska.
Of Counsel.
Dated Lincoln, Nebraska,
November 20, 1922.

Supreme Court, U. S.
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Clerk

Number 326.

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1922.

ROBERT T. MEYER, PLAINTIFF IN ERROR,

v.

THE STATE OF NEBRASKA, DEFENDANT IN ERROR.

REPLY BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

C. H. ALBERT,
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Number 325.

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1922.

ROBERT. T. MEYER, PLAINTIFF IN ERROR,

V.

THE STATE OF NEBRASKA, DEFENDANT IN ERROR.

REPLY BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

I. L. ALBERT,
Attorney for Plaintiff in Error.

CHARLES E. SANDALL,
ARTHUR G. WRAY,
AUGUST WAGNER,
Of Counsel.

The Federal Constitutional question was decided by the Supreme Court of Nebraska.

The truth of the foregoing is apparent from the opinion which is set out in the printed record, beginning at page 50. The following excerpts are taken therefrom.

"The enactment of such a statute comes reasonably within the police power of the state.

* * * * * * *

"It is suggested that the law is an unwarranted restriction, in that it applies to all citizens of the state and arbitrarily interferes with the rights of citizens who are not of foreign ancestry, and prevents them, without reason, from having their children taught foreign languages in school.

* * * * * * *

"Whether or not the policy of this law is correct is not for the court to say. That was a question exclusively for the legislature. The question for the court is whether the law is reasonable, and not capricious and abitrary; whether it was enacted in the interests of the welfare of the state; whether it is lawful exercise of the police power; in general, whether it is constitutional. If the policy of the law is wrong, the people of the state, through the legislature, or upon their own initiative, can change it" (pp. 52 and 53, printed record).

In the dissenting opinion, at page 55 of the printed record, the dissenting judge says:

"The matter is of grave importance, since it involves the question as to the extent that a legislature may infringe upon the fundamental rights and liberty of a citizen protected by the state and federal constitutions."

The federal question was again brought to the attention of the court by paragraphs VII, VIII and IX of the motion for rehearing. Those paragraphs are as follows:

VII.

"The court erred in deciding and holding that such statute, as construed by the court in the majority opinion filed herein, does not operate to deprive the plaintiff in error and other persons of their liberty or property without due process of law nor as an unreasonable restraint upon the liberty of the plaintiff in error and other persons in contravention of the Fourteenth Amendment to the

Constitution of the United States or of Section 3, Article I of the Constitution of the State of Nebraska."

VIII.

"The judgment of this court, affirming the judgment of conviction of the plaintiff in error, contravenes the Fourteenth Amendment to the Constitution of the United States in that it operates to deprive the plaintiff of his liberty and property without due process of law and as an unreasonable restraint upon his liberty and as a denial of the equal protection of the law."

IX.

"The said statute is discriminatory in that it unreasonably discriminates between those teaching a foreign language in a parochial or private school and those teaching such languages to pupils privately."

The judgment disposing of that motion was by the court, not by a single judge (pp. 62-63, printed record). There the court in express terms considers the federal question, and overrules the motion.

II.

The fact that the Federal question was treated by the State Court as sufficiently raised, and was dealt with by the State Court, is sufficient to confer jurisdiction on this court.

The judgment of the highest court of a state, sustaining, as a legitimate exertion of the police power of the state, a statute, the validity of which was challenged as repugnant to the Federal Constitution, is reviewable in the Federal Supreme Court by a writ of error.

Western Turf Ass'n v. *Greenberg,* 204 U. S. 359, 27 S. Ct. 384, 51 U. S. (L. ed.) 520.

Whether a federal question is properly raised in the trial court of the state is a question of state practice, and if it is passed upon and denied by the highest court of the state the

Supreme Court of the United States has jurisdiction to review the judgment of the state court.

North Carolina R. Co. v. *Zachary,* 232 U. S. 248, 34 S. Ct. 305, 58 U. S. (L. ed.) 591, Ann. Cas. 1914C 159.

Where a state court holds that a federal question is made before it, according to its practice, and proceeds to determine it, this court will regard the question as duly made.

Miedreich v. *Lauenstein,* 232 U. S. 236, 34 S. Ct. 309, 58 U. S. (L. ed.) 584.

Erie R. Co. v. *Purdy,* 185 U. S. 148, 22 S. Ct. 605, 46 U. S. (L. ed.) 847.

"While the right was not originally specially set up and claimed, * * * under the rule of this court requiring the opinions to be sent up with the record, it has frequently been held to be a sufficient compliance with the words 'specially set up and claimed,' that it was duly considered in the opinion of the court and ruled against the plaintiff in error."

San Jose Land, etc., Co. v. *San Jose Ranch Co.,* 189 U. S. 180.

Citing:

Delmas v. *Merchants' Ins. Co.,* 14 Wall, 661, 20 U. S. (L. ed.) 757.

Murdock v. *Memphis,* 20 Wall. 590, 22 U. S. (L. ed.) 429.

Crossley v. *New Orleans,* 108 U. S. 105, 2 S. Ct. 300, 27 U. S. (L. ed.) 667.

Gross v. *U. S. Mortgage Co.,* 108 U. S. 477, 2 S. Ct. 940, 27 U. S. (L. ed.) 795.

Philadelphia Fire Assn. v. *New York,* 119 U. S. 110, 7 S. Ct. 108, 30 U. S. (L. ed.) 342.

Crescent City Live-Stock Co. v. *Butchers' Union Slaughter House Co.,* 120 U. S. 141, 7 S. Ct. 472.

To the same effect are,

North Carolina R. Co. v. *Zachary, supra.*

Home for Insurables v. *New York,* 187 U. S. 155, 157, 23 S. Ct. 84, 47 U. S. (L. ed.) 117.

Haire v. *Rice,* 204 U. S. 291, 299, 27 S. Ct. 281, 51 U. S. (L. ed.) 490.

Chambers v. *Baltimore & O. R. Co.,* 207 U. S. 142, 148, 28 S. Ct. 34, 52 U. S. (L. ed.) 143.

In *Mallinckrodt Chemical Works* v. *Missouri,* 238 U. S. 41, 35 S. Ct. 671, 59 U. S. (L. ed.) 1192, the court said:

> "There is a motion to dismiss, based upon the ground that the federal questions here set up were not raised in the trial court, or in the supreme court of the state, with sufficient definiteness * * * it appears, however, from the opinion of the supreme court that the question of equal protection under the 14th Amendment was treated as being sufficiently raised, and was specifically dealt with and ruled against plaintiff in error. This is sufficient to confer jurisdiction upon this court, and the motion to dismiss must be denied."

III.

The information, which is set out at page 3 of the printed record, shows on its face that a judgment of conviction thereon would trench on the rights of the accused guaranteed by the Fourteenth Amendment to the Constitution of the United States.

An information that will not support a conviction without doing violence to the supreme law of the land does not charge an offense.

In *Ex Parte Siebold,* 100 U. S. 371, this court said:

> "The validity of the judgments is assailed on the ground that the acts of Congress under which the indictments were found are unconstitutional. * * * An unconstitutional law is void. * * * An offense created by it is not a crime. A conviction under it is not only merely erroneous, but is illegal and void. * * * The question of

the court's authority to try and imprison the party may be reviewed on *habeas corpus.* * * * We think so, because, if the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the causes."

See also:

Minnesota v. *Barber,* 136 U. S. 313, 10 S. Ct. 862, 34 L. ed. 455 (aff. 39 Fed. 641).

In re Savage, 134 U. S. 176, 10 S. Ct. 389, 33 L. ed. 842.

In re Medley, 134 U. S. 160, 10 S. Ct. 384, 33 L. ed. 835.

In re Nielsen, 131 U. S. 176, 9 S. Ct. 672, 33 L. ed. 118.

Asher v. *Texas,* 128 U. S. 129, 9 S. Ct. 1, 32 L. ed. 368.

The sufficiency of the information was challenged at the opening of the trial (B. of Ex. p. 17, printed record) and the objection overruled. This ruling was assigned as error in the Supreme Court of the state (Par. 3, p. 2, printed record). It was necessarily involved in the decision, and the state court considered and decided it.

It would be an exceedingly technical rule that would require this court to refuse to consider the federal question involved on this appeal, but allow the plaintiff in error to obtain a review thereof by proceedings in *habeas corpus.*

IV.

Under the Nebraska practice, the sufficiency of a pleading to support a judgment may be raised by motion for rehearing in the Supreme Court.

Vila v. *G. I. El. Light etc. Co.,* 68 Neb. 223.

Kemper v. *Renshaw,* 58 Neb. 513.

State v. *Moores.* 58 Neb. 285.

Respectfully submitted,

I. L. ALBERT,
Attorney for Plaintiff in Error.

Reversed.

MEYER *v.* STATE OF NEBRASKA.

ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

No. 325. Argued February 23, 1923.—Decided June 4, 1923.

A state law forbidding, under penalty, the teaching in any private, denominational, parochial or public school, of any modern language, other than English, to any child who has not attained and success-

fully passed the eighth grade, invades the liberty guaranteed by the Fourteenth Amendment and exceeds the power of the State. P. 399.

So *held* where the statute was applied in punishment of an instructor who taught reading in German, to a child of ten years, in a parochial school.

107 Neb. 657, reversed.

ERROR to a judgment of the Supreme Court of Nebraska affirming a conviction for infraction of a statute against teaching of foreign languages to young children in schools.

Mr. Charles E. Sandall, with whom *Mr. I. L. Albert*, *Mr. Arthur G. Wray* and *Mr. August Wagner* were on the briefs, for plaintiff in error.

The right to choose and pursue a given legitimate vocation is within the rights guaranteed by the Fourteenth Amendment.

The vocation of the plaintiff is teaching—a legitimate vocation—and in teaching, as he did, a certain subject in a language other than English, he encroached upon the rights of no other person. *Ritchie* v. *People*, 155 Ill. 98; *Ex parte Harrison*, 212 Mo. 88; *Butchers' Union Co.* v. *Crescent City Co.*, 111 U. S. 746; *Hooper* v. *California*, 155 U. S. 662; *Allgeyer* v. *Louisiana*, 165 U. S. 589; *Cully* v. *Baltimore & Ohio R. R. Co.*, 1 Hughes, 539; *Adair* v. *United States*, 208 U. S. 578; *Munn* v. *Illinois*, 94 U. S. 113; *Taylor* v. *Beckham*, 178 U. S. 548; *Powell* v. *Pennsylvania*, 127 U. S. 678. *Berea College* v. *Kentucky*, 211 U. S. 45, dissenting opinion, p. 67.

Imparting knowledge in a foreign language is not inherently immoral or inimical to the public welfare, and not a legitimate subject for prohibitory legislation. In fact, an examination of the statute will show that the legislature did not regard the teaching of a pupil in some language other than English as vicious or inimical to the public welfare. It applies only to schools, leaving teach-

ers and others at liberty to teach privately. *State* v. *Redmon*, 134 Wis. 89; *People* v. *Weiner*, 271 Ill. 74.

When the legislature by clear implication finds that the practice or pursuit against which the act is leveled does not of itself injuriously affect the public, a measure designed to prohibit it is unconstitutional. It being clear, therefore, both upon reason and legislative finding, that the prohibited acts are not harmful, this measure, insofar as it imposes upon teachers, both lay and clerical, penalties of fine and imprisonment for the giving of instruction in languages, is violative of their constitutional right to engage in the practice of their chosen profession or calling. *Coal Co.* v. *People*, 17 Ill. 66; *Adams* v. *Tanner*, 244 U. S. 590.

The statute, as construed by the Supreme Court of Nebraska, is prohibitive, not regulatory of a legitimate vocation.

The statute in question is not a legitimate exercise of the police power. The exercise of the police power can be justified only when it adds, in a substantial way, to the security of the fundamental rights.

The relation to the common good of a law fixing a minimum of education is readily perceived, but how one fixing a maximum—limiting the field of human knowledge—can serve the public welfare or add substantially to the security of life, liberty or the pursuit of happiness is inconceivable. *State* v. *Redmon, supra; Mugler* v. *Kansas*, 123 U. S. 623; *Wyeth* v. *Cambridge Board of Health*, 200 Mass. 474; *State* v. *Sperry*, 94 Neb. 785.

One claim put forward is, that the statute forwards the work of Americanization. But in our desire for the Americanization of our foreign born population we should not overlook the fact that the spirit of America is liberty and toleration—the disposition to allow each person to live his own life in his own way, unhampered by unreasonable and arbitrary restrictions.

The law, as construed by the Supreme Court of Nebraska, operates to deny the plaintiff in error the equal protection of the law.

The law is directed against the teaching in or of a foreign language in public, private, denominational and parochial schools. It leaves those engaged in giving private lessons in such languages free to pursue their vocations. *Nebraska District Evangelical Synod* v. *McKelvie,* 104 Neb. 93; *Bailey* v. *People,* 190 Ill. 28; *Dunahoo* v. *Huber,* 185 Ia. 753; *State* v. *Sloane,* 49 N. J. L. 356; *State* v. *Ramsey,* 48 Minn. 236; *Lincoln* v. *Lincoln Gas Co.,* 182 Fed. 926; *Haynes* v. *Lapeer Circuit Judge,* 201 Mich. 138; *Smith* v. *Board of Examiners,* 85 N. J. L. 46.

Mr. Mason Wheeler and *Mr. O. S. Spillman,* with whom *Mr. Clarence A. Davis,* Attorney General of the State of Nebraska, and *Mr. Hugh La Master* were on the brief, for defendant in error.

The federal constitutional question was injected into the case as an afterthought and too late to permit its review by this Court.

The statute was a legitimate exercise of the police power of the State.

The statute forbids the teaching of foreign languages to children of tender years before such children are grounded in the English tongue. It does not forbid the use of foreign languages by persons of maturity or prevent the study of foreign languages by persons who have passed the eighth grade. It does not in any way interfere with *bona fide* religious instruction or with any legitimate religion.

The object of the legislation, as is pointed out in *Nebraska District of Evangelical Synod* v. *McKelvie,* 104 Neb. 93, and in the second case, 187 N. W. 927, and in the decision below, and by the Ohio Supreme Court in *Pohl* v. *State,* 102 Oh. St. 474, and by the Iowa Supreme Court in *Bartels* v. *State,* 191 Ia. 1060, was to create an enlight-

ened American citizenship in sympathy with the principles and ideals of this country. and to prevent children reared in America from being trained and educated in foreign languages and foreign ideals before they have had an opportunity to learn the English language and observe American ideals. It is a well known fact that the language first learned by a child remains his mother tongue and the language of his heart. The purpose of the statute is to insure that the English language shall be the mother tongue and the language of the heart of the children reared in this country who will eventually become the citizens of this country.

These foreign language statutes are no more difficult to sustain under the police power of the State than the Bank Guarantee Act, the Workmen's Compensation Acts, the Female Labor Laws, and Tenement Housing legislation.

Taking the test laid down as to the legitimate exercise of the police power by Freund (§ 143): A danger exists; of sufficient magnitude; concerning the public; the proposed measure tends to remove it; the restraint is a requirement in proportion to the danger; it is possible to secure the object sought without impairing essential rights and principles. *Wilson* v. *New*, 243 U. S. 332; *Muller* v. *Oregon*, 208 U. S. 412; *Second Employers' Liability Cases*, 223 U. S. 1; *Arizona Employers' Liability Cases*, 250 U. S. 400; *Block* v. *Hirsh*, 256 U. S. 135. If it is within the police power of the State to regulate wages, to legislate respecting housing conditions in crowded cities, to prohibit dark rooms in tenement houses, to compel landlords to place windows in their tenements which will enable their tenants to enjoy the sunshine, it is within the police power of the State to compel every resident of Nebraska so to educate his children that the sunshine of American ideals will permeate the life of the future citizens of this Republic.

The recognized general necessity for legislation similar to the Nebraska foreign language act is shown by the fact that twenty-one States besides Nebraska have enacted similar foreign language laws.

In no State has this foreign language legislation been successfully attacked. Three attempts only have been made, in Ohio, Iowa and Nebraska. In every adjudicated case the legislation has been upheld and sustained as against all constitutional objections.

The police power itself is an attribute of sovereignty. It exists without any reservation in the Constitution. It is founded on the right of the State to protect its citizens, to provide for their welfare and progress and to insure the good of society. It corresponds to the right of self preservation in the individual. Its application varies with the exigencies of the situation and with the progress of mankind. It is the foundation of our social system and upon it depends the security of social order, the life and health of the citizen, the comfort of existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property. It extends to the protection of life, health, comfort and welfare of persons, protection of property, and to the welfare of the State itself. All natural persons within the jurisdiction hold their property and pursue their various callings subject to the police power. It is inherent in the various States of the Union, as well as in the Federal Government. To the extent that property or business is devoted to public use or is affected with a public interest it is subject to regulation by the police power. It extends to regulation of education as the very existence of our government, as well as its progress and development, depends upon the intelligence of our citizenry. *McLean* v. *Arkansas,* 211 U. S. 539; *Muller* v. *Oregon,* 208 U. S. 412; *Holden* v. *Hardy,* 169 U. S. 366; *Jacobson* v. *Massachusetts,* 197 U. S. 11; *Atkin* v. *Kansas,* 191 U. S. 207; *Murphy* v. *California,*

225 U. S. 623; *Booth* v. *Illinois*, 184 U. S. 425; *Second Employers' Liability Cases*, 223 U. S. 1; *Noble State Bank* v. *Haskell*, 219 U. S. 104; s. c., 219 U. S. 575; *Arizona Employers' Liability Cases*, 250 U. S. 400; *Gilbert* v. *Minnesota*, 254 U. S. 325; *Wilson* v. *New*, 243 U. S. 332; *Block* v. *Hirsh*, 256 U. S. 135; *State* v. *Sperry*, 94 Neb. 785; *Matter of Gregory*, 219 U. S. 216; *Rast* v. *Van Deman & Lewis Co.*, 240 U. S. 342; *Pitney* v. *Washington*, 240 U. S. 387; *Tanner* v. *Little*, 240 U. S. 369.

The statute does not unlawfully interfere with the defendant's occupation as a teacher. *Mugler* v. *Kansas*, 123 U. S. 623; *Wenham* v. *State*, 65 Neb. 395; *Muller* v. *Oregon*, 208 U. S. 412; *Barbier* v. *Connolly*, 113 U. S. 27; *Slaughter-House Cases*, 16 Wall. 36; *Chicago, Burlington & Quincy R. R. Co.* v. *McGuire*, 219 U. S. 549.

The statute does not deny defendant the equal protection of the law. *Nebraska District of Evangelical Synod* v. *McKelvie*, 187 N. W. 927; *Miller* v. *Wilson*, 236 U. S. 373; *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61; *Johnston* v. *Kennecott Copper Co.*, 248 Fed. 407; *Halter* v. *Nebraska*, 205 U. S. 34; *Quong Wong* v. *Kirkendall*, 223 U. S. 59; *Wilson* v. *New*, 243 U. S. 332; *Pitney* v. *Washington*, 240 U. S. 387; *Tanner* v. *Little*, 240 U. S. 369; *McLean* v. *Arkansas*, 211 U. S. 539; *Lower Vein Coal Co.* v. *Industrial Board*, 255 U. S. 144.

Mr. William D. Guthrie and *Mr. Bernard Hershkopf*, by leave of court, filed a brief as *amici curiæ*.

Mr. Justice McReynolds delivered the opinion of the Court.

Plaintiff in error was tried and convicted in the District Court for Hamilton County, Nebraska, under an information which charged that on May 25, 1920, while an instructor in Zion Parochial School, he unlawfully taught the subject of reading in the German language to Raymond Parpart, a child of ten years, who had not attained

and successfully passed the eighth grade. The information is based upon "An act relating to the teaching of foreign languages in the State of Nebraska," approved April 9, 1919, which follows [Laws 1919, c. 249.]:

"Section 1. No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language.

"Sec. 2. Languages, other than the English language, may be taught as languages only after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county in which the child resides.

"Sec. 3. Any person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction, shall be subject to a fine of not less than twenty-five dollars ($25), nor more than one hundred dollars ($100) or be confined in the county jail for any period not exceeding thirty days for each offense.

"Sec. 4. Whereas, an emergency exists, this act shall be in force from and after its passage and approval."

The Supreme Court of the State affirmed the judgment of conviction. 107 Neb. 657. It declared the offense charged and established was "the direct and intentional teaching of the German language as a distinct subject to a child who had not passed the eighth grade," in the parochial school maintained by Zion Evangelical Lutheran Congregation, a collection of Biblical stories being used therefor. And it held that the statute forbidding this did not conflict with the Fourteenth Amendment, but was a valid exercise of the police power. The following excerpts from the opinion sufficiently indicate the reasons advanced to support the conclusion.

"The salutary purpose of the statute is clear. The legislature had seen the baneful effects of permitting for-

eigners, who had taken residence in this country, to rear and educate their children in the language of their native land. The result of that condition was found to be inimical to our own safety. To allow the children of foreigners, who had emigrated here, to be taught from early childhood the language of the country of their parents was to rear them with that language as their mother tongue. It was to educate them so that they must always think in that language, and, as a consequence, naturally inculcate in them the ideas and sentiments foreign to the best interests of this country. The statute, therefore, was intended not only to require that the education of all children be conducted in the English language, but that, until they had grown into that language and until it had become a part of them, they should not in the schools be taught any other language. The obvious purpose of this statute was that the English language should be and become the mother tongue of all children reared in this state. The enactment of such a statute comes reasonably within the police power of the state. *Pohl* v. *State*, 132 N. E. (Ohio) 20; *State* v. *Bartels*, 181 N. W. (Ia.) 508.

"It is suggested that the law is an unwarranted restriction, in that it applies to all citizens of the state and arbitrarily interferes with the rights of citizens who are not of foreign ancestry, and prevents them, without reason, from having their children taught foreign languages in school. That argument is not well taken, for it assumes that every citizen finds himself restrained by the statute. The hours which a child is able to devote to study in the confinement of school are limited. It must have ample time for exercise or play. Its daily capacity for learning is comparatively small. A selection of subjects for its education, therefore, from among the many that might be taught, is obviously necessary. The legislature no doubt had in mind the practical operation of the law. The law affects few citizens, except those of foreign line-

age. Other citizens, in their selection of studies, except perhaps in rare instances, have never deemed it of importance to teach their children foreign languages before such children have reached the eighth grade. In the legislative mind, the salutary effect of the statute no doubt outweighed the restriction upon the citizens generally, which, it appears, was a restriction of no real consequence."

The problem for our determination is whether the statute as construed and applied unreasonably infringes the liberty guaranteed to the plaintiff in error by the Fourteenth Amendment. "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. *Slaughter-House Cases,* 16 Wall. 36; *Butchers' Union Co.* v. *Crescent City Co.,* 111 U. S. 746; *Yick Wo* v. *Hopkins,* 118 U. S. 356; *Minnesota* v. *Barber,* 136 U. S. 313; *Allgeyer* v. *Louisiana,* 165 U. S. 578; *Lochner* v. *New York,* 198 U. S. 45; *Twining* v. *New Jersey,* 211 U. S. 78; *Chicago, Burlington & Quincy R. R. Co.* v. *McGuire,* 219 U. S. 549; *Truax* v. *Raich,* 239 U. S. 33; *Adams* v. *Tanner,* 244 U. S. 590; *New York Life Ins. Co.* v. *Dodge,* 246 U. S. 357; *Truax* v. *Corrigan,* 257 U. S. 312; *Adkins* v. *Children's Hospital,* 261 U. S. 525; *Wyeth* v. *Cambridge Board of Health,* 200 Mass. 474. The established doctrine is that this liberty may not be inter-

fered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect. Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the courts. *Lawton* v. *Steele*, 152 U. S. 133, 137.

The American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted. The Ordinance of 1787 declares, "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life; and nearly all the States, including Nebraska, enforce this obligation by compulsory laws.

Practically, education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto. The calling always has been regarded as useful and honorable, essential, indeed, to the public welfare. Mere knowledge of the German language cannot reasonably be regarded as harmful. Heretofore it has been commonly looked upon as helpful and desirable. Plaintiff in error taught this language in school as part of his occupation. His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the Amendment.

The challenged statute forbids the teaching in school of any subject except in English; also the teaching of any other language until the pupil has attained and successfully passed the eighth grade, which is not usually accomplished before the age of twelve. The Supreme Court of the State has held that "the so-called ancient or dead languages" are not "within the spirit or the purpose of

the act." *Nebraska District of Evangelical Lutheran Synod* v. *McKelvie*, 187 N. W. 927. Latin, Greek, Hebrew are not proscribed; but German, French, Spanish, Italian and every other alien speech are within the ban. Evidently the legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own.

It is said the purpose of the legislation was to promote civic development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals; and "that the English language should be and become the mother tongue of all children reared in this State." It is also affirmed that the foreign born population is very large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type and the public safety is imperiled.

That the State may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means.

For the welfare of his Ideal Commonwealth, Plato suggested a law which should provide: "That the wives of our guardians are to be common, and their children are to be common, and no parent is to know his own child,

nor any child his parent. . . . The proper officers will take the offspring of the good parents to the pen or fold, and there they will deposit them with certain nurses who dwell in a separate quarter; but the offspring of the inferior, or of the better when they chance to be deformed, will be put away in some mysterious, unknown place, as they should be." In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and intrusted their subsequent education and training to official guardians. Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any legislature could impose such restrictions upon the people of a State without doing violence to both letter and spirit of the Constitution.

The desire of the legislature to foster a homogeneous people with American ideals prepared readily to understand current discussions of civic matters is easy to appreciate. Unfortunate experiences during the late war and aversion toward every characteristic of truculent adversaries were certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the State and conflict with rights assured to plaintiff in error. The interference is plain enough and no adequate reason therefor in time of peace and domestic tranquility has been shown.

The power of the State to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned. Nor has challenge been made of the State's power to prescribe a curriculum for institutions which it supports. Those matters are not within the present controversy. Our concern is with the prohibition approved by the Supreme Court. *Adams* v.

Tanner, supra, p. 594, pointed out that mere abuse incident to an occupation ordinarily useful is not enough to justify its abolition, although regulation may be entirely proper. No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibition with the consequent infringement of rights long freely enjoyed. We are constrained to conclude that the statute as applied is arbitrary and without reasonable relation to any end within the competency of the State.

As the statute undertakes to interfere only with teaching which involves a modern language, leaving complete freedom as to other matters, there seems no adequate foundation for the suggestion that the purpose was to protect the child's health by limiting his mental activities. It is well known that proficiency in a foreign language seldom comes to one not instructed at an early age, and experience shows that this is not injurious to the health, morals or understanding of the ordinary child.

The judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

[See the separate opinion of MR. JUSTICE HOLMES, concurred in by MR. JUSTICE SUTHERLAND, in the next case, at p. 412, *infra.*]